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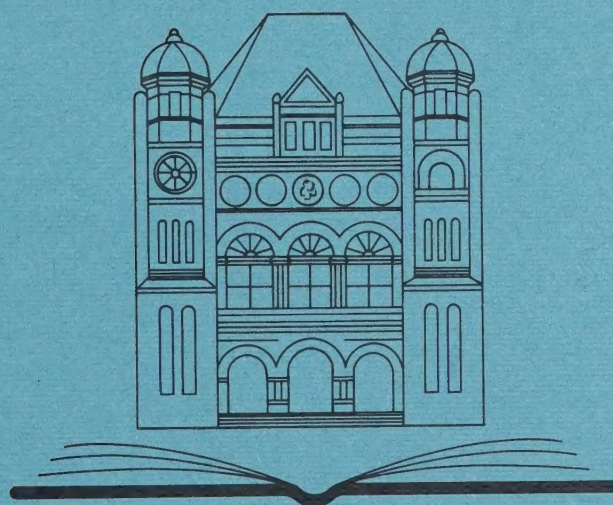
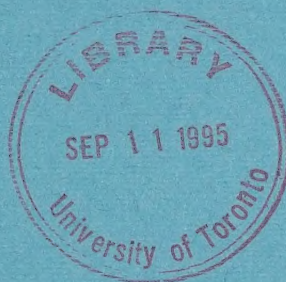
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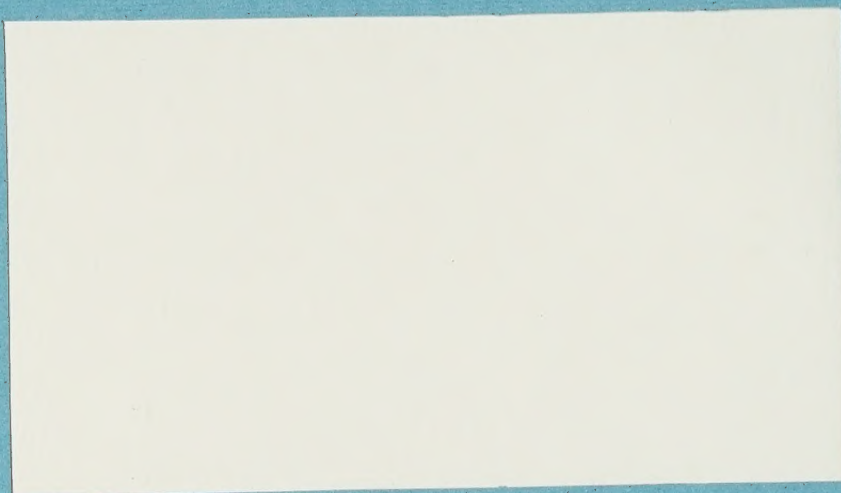
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**A COMPARATIVE SUMMARY OF
KEY CONSTITUTIONAL DOCUMENTS,
REPORTS AND PROPOSALS**



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REPORTS AND PROPOSALS**

Prepared by:

Ted Wakefield
Research Officer
Legislative Research Service

March 1992

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INTRODUCTION

Since the failure of the Meech Lake Accord in June 1990 there has been a veritable flood of formal reports and informal proposals about how Canada's Constitution should be reformed to resolve the crisis in national unity. Clearly, sorting through the growing pile of documents and relating each set of proposals to the others, and to the existing Constitution, is a bewildering and time-consuming exercise. Yet how else can legislators and citizens track the ongoing debate and arrive at their own conclusions?

The following paper aims to make the exercise a little less onerous by providing a summary of significant constitutional documents, reports and proposals. It was originally prepared as a background report for the Select Committee on Ontario in Confederation, and has since been updated. The summaries are arranged according to nine key areas that arose out of the Select Committee's deliberations. The documents summarized range from the major existing constitutional acts through to the current federal proposals and reports from provincial constitutional committees.

It is not intended that this paper be read cover to cover. Rather, readers will likely refer to it to answer specific questions: What do the different provincial committees say about an amending formula? What does the Group of 22 Report say about Senate reform? Alternatively, those interested in the range of options on a given issue, such as how powers should be divided between the federal and provincial governments, can survey what has been said, in chronological order.

The paper's nine sections are:

- *Fundamental characteristics and values of Canada.* What it means to be a Canadian, the basic national values and characteristics we might recognize in the Constitution, and how we might recognize them.
- *Charter of Rights and Freedoms.* Proposed amendments to better protect the rights of Canadians, through rewriting existing sections, adding new rights and/or altering the so-called "override clause".

- *Aboriginal issues.* Proposals affecting the relationship between Aboriginal peoples and the governments and institutions of Canada, including such issues as self-determination, self-government and land claims.
- *Constitutional change and the economy.* Proposed constitutional changes that might affect the Canadian economy, whether in the way governments regulate the economy or in the way they spend money.
- *Quebec's future in Canada.* Proposed constitutional changes that might affect Quebec uniquely or that relate to Quebec's traditional concerns vis-à-vis constitutional reform. Unavoidably, there is some overlap between this section and others, particularly Division of Powers, Official Languages and National Institutions.
- *Division of powers.* How legislative powers might be divided between the federal and provincial levels of government.
- *National institutions and the political system.* Proposed reform to the Senate, the House of Commons (including the electoral process) and the Supreme Court of Canada, and proposed new federal institutions.
- *The process of constitutional reform.* Proposals to change the reform process itself, including such issues as amending formulas, a constituent assembly and referenda.
- *Official languages.* Possible amendments affecting the status or use of Canada's official languages, or the status of its official language minorities.

The legal documents summarized are:

- The *Constitution Act, 1867* and the *Constitution Act, 1982* (including the *Canadian Charter of Rights and Freedoms*), summarized under a single heading, **Existing Constitution**.
- The **Meech Lake Constitutional Accord** of June 1987. This proposed package of amendments expired in June 1990 when it failed to be ratified by all ten provinces.
- The **1990 Constitutional Agreement** or so-called Companion Agreement. This document was proposed to be passed with the Meech Lake Accord, but failed along with it in 1990.

The reports and proposals summarized are:

- *Report of the Constitutional Committee of the Québec Liberal Party* (the **Allaire Commission Report**) of January 1991. This commission of 17

members of the party was established by the Québec Liberal Party in March 1990.

- *Report of the Commission on the Political and Constitutional Future of Québec* (the **Bélanger-Campeau Commission Report**) of March 1991. This commission had 36 members, including 18 MNAs, representing the government and two opposition parties; 18 people who were not MNAs, including two federal MPs from Quebec and others representing municipalities, business, trade unions, cooperatives, education, and cultural groups; and the Premier and Leader of the Official Opposition.
- *Some Practical Suggestions for Canada: Report of the Group of 22*, June 1991. This informal group consisted of 22 prominent Canadians who met between December 1990 and May 1991 to discuss Canada's future.
- *The Report of the Special Joint Committee of the Senate and the House of Commons on the Process for Amending the Constitution of Canada* (**Beaudoin-Edwards Committee Report**), June 1991. This committee of five Senators and 12 MPs was set up in December 1990 to consider the process of constitutional reform, existing amending formulas and alternatives.
- *Report to the People and Government of Canada of the Citizens' Forum on Canada's Future* (**Spicer Commission Report**), June 1991. This commission of 12 prominent Canadians was set up by the federal government in November 1990 to listen to, discuss and report on the views of Canadians about their future.
- *Looking Ahead: A Maritime Perspective*, The Northumberland Group. (**Northumberland Group Report**) This group of 13 prominent people from the three Maritime provinces met in April 1991 to produce a statement on national unity and make recommendations for constitutional reform to meet the needs of Maritime Canadians. Its report was released in June 1991.
- *A Canadian Social Charter: Making Our Shared Values Stronger*, A Discussion Paper, Ministry of Intergovernmental Affairs, Ontario. (**Ontario Discussion Paper**) This paper, released in September 1991, puts forward the principles and proposals of the Ontario Government in favour of the entrenchment of social and economic rights in the Constitution. It is not, however, a final position on the Constitution.
- *Shaping Canada's Future Together: Proposals*, Federal Government. (**Federal Proposals**) These proposals were released by the federal government in September 1991 and will serve as the focus of hearings of a Special Joint Committee of the House of Commons and the Senate, which is to report by the end of February 1992. Again, these proposals are not a final position on the Constitution.

- *Report of the Special Committee of the Legislative Assembly of Prince Edward Island on the Constitution of Canada (Prince Edward Island Report)* This seven-member committee was set up to consult with interested Islanders and make recommendations to the PEI legislature on how to achieve Canadian unity. It released this report in September 1991.
- *Report of the Manitoba Constitutional Task Force (Manitoba Task Force Report)* This task force was composed of six MLAs and one private citizen, its chair, Professor Wally Fox-Decent. It was set up November 1990, and released its final report October 28, 1991.
- *Canada: A Country for All, The Report of the Nova Scotia Working Committee on the Constitution (Nova Scotia Working Committee)* This non-legislative committee was composed of 12 members of the public and chaired by Eric Kierans, a former federal and provincial (Quebec) cabinet minister. The committee held public meetings and received numerous written submissions. It was set up in June 1991 and released its final report in November.
- *Report of the New Brunswick Commission on Canadian Federalism (New Brunswick Commission)* This nine-member commission, set up in September 1990, consisted of legislators and private citizens, including one Aboriginal representative. Its report was released in January 1992.
- *A Social Charter for Canada (Ontario Social Charter)* This brief proposal for a social charter was released by Premier Bob Rae on February 13, 1992 and also tabled with the federal Special Joint Committee (see below).
- *An Agenda for Constitutional Reform: Final Report of the York University Constitutional Reform Project (York University Project)* Released in late January, this eight-month research project was coordinated by Patrick Monahan and Lynda Covello of York University. It brought together academics from York and the University of Toronto. The 164-page report included 48 detailed recommendations and was accompanied by 11 background studies by various Canadian academics.
- *Three Nations Equitable From Sea to Sea (Three Nations Concept)* This is an essay on constitutional issues by 11 academics from the University of Toronto and York University. An edited version was released in early February and printed in at least one Toronto newspaper (February 4).
- *Final Report of the Select Committee on Ontario in Confederation (Ontario Select Committee)* The committee comprised 12 MPPs representing all three parties in the Ontario legislature. Set up in December 1990, it held three rounds of public hearings, received written and telephone submissions, and organized a special conference in October 1991. It also travelled to other parts of Canada and met with constitutional committees of most other provinces and the territories. Its final report was released in early February 1992.

- *Report of the Special Joint Committee on a Renewed Canada (Beaudoin-Dobbie Committee)* This joint Parliamentary committee, established in June 1991, comprised 11 Senators and 21 MPs. It held hearings in every province and territory, and organized five major conferences in January and February 1992; in all, it received 3,000 submissions and heard testimony from 700 people, including most provincial Premiers. Its final report was submitted to the federal government February 29, and made public March 1.
- *Alberta in a New Canada: Visions of Unity, Report of the Alberta Select Special Committee on Constitutional Reform (Alberta Select Special Committee)* This committee was established in March 1991 and comprised 16 Members of the Legislature (10 PC, 4 NDP, 2 Liberal). It held two rounds of public hearings: in May and June; and in September. As well as its final report, released March 10, 1992, the Committee released in January the results of an Angus Reid poll it had commissioned on constitutional issues.

In summarizing these constitutional acts and proposals an attempt has been made to be as true as possible to the original, either through direct quotation or paraphrasing. In most cases, only formal recommendations are summarized. In any case, this summary should not be regarded as authoritative. If a question arises as to precise wording, readers should refer to the relevant original document.

PART ONE: OVERVIEW OF RECENT REPORTS AND PROPOSALS

Part One presents a brief overview and analysis of each of the summarized reports and proposals for constitutional reform, setting out their central themes and assessing their significance in the broader process. An attempt has been made to assess each report in a concise yet fair way, and to discuss them in a context that is helpful to Members in their deliberations.

The Allaire Report

This report's recommendations grew out of its pessimistic analysis of existing Canadian federalism and its conclusion that radical change was called for. It sets out three broad objectives: the political autonomy of Quebec; a stronger economic union within Canada; a new Quebec-Canada structure.

Significant among the detailed proposals are the unprecedented degree of devolution called for, going beyond the areas of Quebec's traditional concern of language, culture and education; a Quebec veto on all constitutional amendments; the abolition of the Senate; and the increased status of the *Quebec Charter of Human Rights and Freedoms*. Much of the report's rationale for reordering the division of powers is based on its perception of great inefficiency and fiscal mismanagement at the federal level. Allaire still sees a federal role in maintaining equity across regions (equalization), but says less emphasis should be put on providing equal levels of services and more on investing in infrastructure.

The Allaire Report continued Quebec's insistence on bilateral negotiations between Quebec and Ottawa (introduced by Premier Robert Bourassa after the failure of the Meech Lake Accord). It also re-introduced the idea of a Quebec referendum, either to ratify an agreement with the rest of Canada following from the Allaire proposals or, if there were no agreement, on Quebec sovereignty.

The Report is, to date, the only formal, detailed expression of Quebec's constitutional position following Meech Lake, and represents (with some minor amendments) the view of Quebec's ruling party. What remains unclear, however, is whether the proposals are a firm "bottom line" for the province or simply a bargaining position, a starting point for negotiation.

The Bélanger-Campeau Report

This report shares a similar analysis of Quebec's place in Canada to Allaire, but arrives at even less optimistic conclusions. The commissioners decided Quebec has to make a decision on its own sovereignty before concluding new negotiations with the rest of Canada. Therefore the report recommends a referendum on the question be held in 1992, and that a National Assembly committee be set up to study all the implications of sovereignty and any offer of economic partnership coming from Ottawa. Its second set of recommendations deals with setting up a second legislative committee to consider any formal, binding constitutional proposal from the rest of Canada.

The Bélanger-Campeau report reaffirms Quebec's bilateral approach to dealing with the rest of Canada, and indeed seems to prohibit formal discussions between its "constitutional" committee and those of the other provinces.

The Bélanger-Campeau recommendations were later passed into law by the National Assembly, with minor amendments. This means the report's timetable and agenda are now formally those of Quebec. However, the Quebec government may retain some flexibility in regards to the referendum. It may be possible to postpone the referendum or perhaps shift the question to the latest proposal from the rest of Canada.

Report of the Group of 22

This report begins from the premise that Canada is not working very well, and that it faces a real possibility of dissolving. It identifies the maintenance of the well-being of Canadians as its central objective, with political unity as the best means and context for achieving that goal. Unity and economic viability in the global marketplace are seen as inextricably linked.

To stay together Canada must change, the report says. Its approach is to set out basic Canadian values, and then assess how the division of powers and national institutions need to be reordered and revamped to better reflect present conditions and needs. Arguing that governments are more effective when smaller and closer to the people they govern, it proposes to make the division of powers between the federal and provincial levels of government more equal, and their respective roles clearer. Then it sets out how this new conception of Canada would work, with the provinces delivering most services to the public while Ottawa retains international relations, national security and management of the national economy in its purview.

In general, this report supports significant decentralization of powers, though it proposes a greater role than does the Allaire Report for the federal government, especially in setting economic policy. It also sees a devolution to all provinces, and not primarily Quebec. The report proposes national standards be protected not through federal spending powers but a new interprovincial agency.

The Group of 22 Report has no official status and whatever significance it does have derives from the prominence and influence of its members. It was the first set of proposals from outside Quebec calling for major devolution, although it did not discuss the Distinct Society issue, instead treating the unity crisis as a broader political problem for all of Canada.

Beaudoin-Edwards Committee Report

This federal Parliamentary committee was set up to study some troublesome aspects of the reform process after the failure of the Meech Lake Accord. One was the role of the public in the process, including the question of a constituent assembly. A second was the role of the Aboriginal people. But perhaps the central conundrum involved the amending formula, specifically squaring Quebec's demand for a veto over major reforms with that of other provinces for some degree of equality.

Beaudoin-Edwards seeks a compromise on the Quebec veto demand by proposing regional vetoes for the Atlantic and Western provinces, while Ontario and Quebec would retain their vetoes. Unanimity, it says, would only apply to very limited matters. Otherwise, the report proposes a generally more inclusive process, with regards to the Aboriginal peoples and the territories. It also sets out parameters for a national referendum on constitutional issues. Instead of a constituent assembly, it recommends a joint Parliamentary committee be set up to review and hold public hearings on the federal government's constitutional proposals; it says this joint committee should set up task forces, each chaired by a member of the committee, to address specific areas such as Aboriginal issues.

This was the first report on the Constitution from a Parliamentary joint committee to be released after the failure of the Meech Lake Accord. The report was not unanimous, as New Democratic Party members dissented; their dissent, which dealt with three issues related to the process of reform, is indicated in the *Process of Constitutional Reform* section in italics.

Spicer Commission Report

This commission was set up by the federal government in November 1990 to elicit the views of the Canadian public on the future of the country. Compared to the other reports, its conclusions are much less precise and do not necessarily imply changes to the Constitution.

Some of the report's recommendations call for changes in controversial federal government programs and federal institutions. For example, it calls for a major shift of priorities in multiculturalism programs, and a review of official bilingualism; and while it does broadly recommend Senate reform, the report is more specific in calling for limits to partisan politics in the House of Commons, changes that would not require any constitutional amendments.

Except on the issue of Aboriginal self-government -- where it makes specific recommendations supportive of Aboriginal concerns -- the Spicer report endorses broad, flexible principles. It affirms the idea that Quebec's needs can be accommodated within the federal structure; identifies efficiency as a priority in reducing intergovernmental overlap; and urges the maintenance of strong national institutions and social values.

The Spicer report was seen to provide a broad-based snapshot of the mood of some 400,000 Canadian voters, rather than of political leaders, in the post-Meech period. Its comments reflect optimism about the country's future and the will to keep it united, and deep concern about many specific issues, including economic change and eroding social values.

The Northumberland Group

As its title *Looking Ahead: A Maritime Perspective* suggests, this report offers a particular vantage point on the constitutional debate. The Northumberland Group, like the Group of 22, pulled together prominent people to make specific recommendations on constitutional reform. Its report, however, is far shorter and less detailed than the Group of 22 report.

The Northumberland Group's chief concern is promoting the economic health of the Atlantic provinces, especially in the context of new global forces. Crucial to this goal are a unified country, a strong federal government, greater government efficiency and greater cooperation among the Atlantic provinces. The report recognizes Quebec's

cultural and linguistic uniqueness, but is wary of the massive decentralization that formal recognition might imply. On the other hand, it is concerned that the needs of the regions be better represented, most effectively in a reformed Senate.

This report is not an official provincial or regional position on constitutional reform. Nor is it based on public hearings. Therefore, as with the Group of 22 report, the Northumberland report provides a suggestion of the concerns of Atlantic Canadians and of how they might see those concerns resolved.

Ontario Discussion Paper

This paper introduces the notion of a Social Charter as a way to protect social and economic rights in the Constitution. It is not the province's final position on constitutional reform, although clearly it sets priorities for Queen's Park. And, of course, in proposing the Social Charter, it is addressing a narrow range of issues and not the whole canvass of reform.

The discussion paper sets out what, in broad brush, should be in the Social Charter, leaving the details to be determined through discussion. It presents several possible ways of entrenching the Charter: a general clause committing governments to equal access to various social programs; a strengthening of s. 36 of the *Constitution Act, 1982* (which commits governments to provide social services of reasonably comparable quality); an entrenched government commitment, following the model of the *Canada Health Act*, applying to other social programs; and building on entrenched mobility rights as applied to portable social programs. Similarly, the paper lays out options for enforcing the Charter, including through a reformed Senate or new federal institution, or through federal-provincial negotiation. (Premier Bob Rae later released a more precise proposal regarding a social charter, included below as the **Ontario Social Charter**.)

Federal Proposals

The federal government's proposals are the most comprehensive and detailed of all the reports considered. They shaped and directed the discussion in Canada at least until the Special Joint Committee tabled its report in February 1992.

Accordingly, it is difficult and perhaps unhelpful to try to summarize the proposals beyond saying they address a wide range of concerns -- from Quebec's unresolved demands that prompted the Meech Lake Accord, to Aboriginal issues, to the call from other regions for Senate reform. As well, new economic preoccupations are reflected in the proposals that focus on the need for strong, coordinated economic leadership.

The wording of some of the proposals is somewhat ambiguous, or at least open to interpretation in terms of their implications. Already, for instance, there have been frankly opposite views of whether the proposals are in general centralizing or decentralizing in terms of the division of powers between the federal and provincial levels of government.

Perhaps the biggest issue looming over these proposals is to what extent are they negotiable. Ottawa has said it is open to suggestions for change and additions; after all, eliciting such responses is the objective of the Special Joint Committee and other processes.

Prince Edward Island Report

This was the first official report of the deliberations of a provincial legislative constitutional committee. Its recommendations reflect many of the themes that emerged in other reports and in public debates, while including some new or unique positions.

The report supports recognition of Quebec as a distinct society with appropriate powers to protect its language and culture (so long as the provinces remain equal);

recognition of the Aboriginal right to self-government (but no use of the word "inherent"); inclusion of a Canada Clause; the importance of Senate reform; and inclusion, in a meaningful way, of the people of Canada in the constitutional process.

On the other hand, the report opposes a constituent assembly, would defer any discussion of the Charter of Rights to a later round, and accepts that Senate reform might also have to be deferred.

Manitoba Task Force Report

This was the second report from a provincial committee, and the first from the two provinces that did not ultimately accept the Meech Lake Accord. The committee members are all MLAs (including two Cabinet ministers), except for the chair, Professor Wally Fox-Decent.

Several of the Task Force's 23 recommendations stand out. First is the recognition, within a Canada Clause, of Quebec's "unique place and role in Canada"; the Canada Clause also includes recognition of the equality of the provinces and an affirmation that Charter rights apply to all Canadians. Second, the report recognizes the *inherent* right of Aboriginal peoples to self-government, including a word the federal proposals did not. On the Charter itself, the Task Force recommends a general review during which questions about the notwithstanding clause might be raised. On the division of powers, the Task Force shows little interest in any decentralization and seems more concerned about threats to equalization payments and other federal funding.

Like the PEI report, the Task Force report also includes themes common to other reports and proposals: support of a Canada Clause, recognizing linguistic duality and multiculturalism; recognition of the urgency of Aboriginal issues; support of substantial Senate reform; support for eliminating governmental overlap; support for reducing interprovincial trade barriers; and support for consideration of a constituent assembly and Manitoba referenda.

Nova Scotia Working Committee

This committee of 12 prominent Nova Scotians, chaired by former federal and Quebec cabinet minister Eric Kierans, included no active politicians. It met over a period of some six months and released its 52-page report in late November 1991. Because the committee is not legislative, its recommendations have no official weight but undoubtedly reflect some degree of public opinion in the province.

The report's conclusions are quite similar to those of the PEI and Manitoba committees, with subtle differences. Regarding the distinct society clause, it supports wording similar to that of the federal proposal, with the proviso that "the provinces remain as equal partners in Canada, recognizing that this requires some accommodation of differences." Otherwise, it takes a stance on Aboriginal self-government, the Charter, and the role of a strong federal government that largely parallels those of PEI and Manitoba. As well, the concern Nova Scotians have about their economic future underpins much of the report.

The committee was divided on the Senate, however, unable to decide whether it should be abolished or substantially reformed. But if there is to be a Senate, the report spells out what that institution should look like: elected, with limited powers and not necessarily with equal representation from the provinces. The report does not address issues like the Canada Clause, and a constituent assembly or referenda.

New Brunswick Commission

This nine-member commission was set up in September 1990 and reported in January 1992, making it one of the longest-standing provincial committees. It is not formally a legislative body, although it included some legislators. Its membership reflected the province's linguistic make-up and included an Aboriginal representative.

The report's 27 recommendations are again quite similar to those of other provincial committees. Notable among the exceptions is one dealing with Canada's linguistic

duality: it calls for the federal government to "preserve and promote" Canada's English and French linguistic communities, and the provincial governments to simply "preserve" those communities. Also, the report generally accepts the federal government's proposals regarding the economic union and discusses them in more detail than do most other provincial reports.

The report supports a flexible reordering of powers between the federal and provincial levels of government. It also goes along with ideas proposed in the Ontario Discussion Paper, saying s. 36 of the *Constitution Act, 1982* should be expanded to specify the social goals governments are committed to.

The report calls for a Senate that is elected, has similar (but more limited) powers to the House of Commons, and has equal numbers of Senators from each province. It also proposes that the Senate should represent Canada's "collective identities" or minority groups more effectively. Like the Nova Scotia report, this one makes few comments on the reform process. Finally, it proposes to entrench New Brunswick's commitment to equality of the two Official Language groups.

A Social Charter for Canada

This brief two-and-a-half page document may be seen as the end-product of the consultative process set out in the Ontario Government's discussion paper, *A Canadian Social Charter: Making Our Shared Values Stronger* (above). It is of interest because Ontario originally put forward the general concept of a social charter. In terms of substance, the proposals are in line with ideas that have appeared elsewhere, notably in the report of the Select Committee on Ontario in Confederation; the key recommendations are that the social charter would build on s. 36 of the *Constitution Act, 1982* and that it would be monitored by a non-judicial agency. (This proposal is only referred to in this paper under the Division of Powers heading.)

York University Project

This 164-page report is based on an eight-month research project coordinated by two York University (Osgoode Hall) law school professors. Its 48 recommendations represent areas of consensus among the 18 project team members from York and the University of Toronto. It also included 11 background papers by various academics, and reports of "round-table" discussions with prominent Ontarians.

The report presents what it calls an Ontario view of the issues at hand, and also consciously attempts to close the "legitimacy gap" between the concerns of governments and citizens. Its recommendations are among the most detailed and comprehensive of the reports summarized. Most -- especially those to do with Quebec, Aboriginal peoples and the Canada Clause -- are in line with the conclusions of other reports, though they include more detail and qualifications. One recommendation certainly stands out, however: that there be a national referendum on any final constitutional agreement.

The report's conclusions on the division of powers, including qualified support for the proposal to permit legislative delegation, indicate clearer support for flexibility than seen in many reports. It goes along with many of the federal government's proposals in this area, including the idea of entrenched bilateral agreements on immigration and culture, and reassigning specific fields. The report also supports most of the proposals to strengthen the economic union. However, rather than backing the Council of the Federation, it proposes an alternate body to monitor internal economic barriers and report to a reformed Senate.

On the Senate itself, the report proposes an elected body having a suspensive veto over most federal legislation, and an absolute veto over certain matters of regional or linguistic significance; it would also ratify appointments to various national institutions. The report supports an "equitable" form of representation for the Senate, "sliding scale" weighted towards the less populous provinces without providing equal seats per province.

Finally, the report makes several recommendations related to how the rest of Canada should approach dealings with a sovereign Quebec, should that materialise. These are not summarized here as other reports do not address this issue. Interested readers should consult the original document.

Three Nations Concept

This report, which is actually more of an essay, is apparently not based on extensive consultations or specific research, and reflects the views of its 11 collaborators. It has a more overtly political theme than most of the other reports, and its recommendations are less precise and less comprehensive. Indeed, a section of the essay is simply a critique of how the present federal government has approached the constitutional crisis.

In general, the essay proposes an approach to reconcile the interests of the three "nations" it says exists in Canada: "English"-Canadians, Quebeckers and Aboriginal peoples. At the same time, the authors seek ways to incorporate the fundamental, distinctive values of Canadians in our institutions, and to buttress them against the economic forces of continentalism and globalization.

The essay's specific proposals are similar to other reports, with only one -- that Quebec be granted a constitutional veto -- standing out.

Ontario Select Committee

This 12-member all-party legislative committee consulted widely across the province and across Canada for 13 months before releasing this consensus report in February. Its 39 recommendations address many issues in considerable detail, and arrive at similar conclusions to several other reports, particularly the York University Constitutional Project.

Notable among the report's proposals are the most detailed discussion from Ontario to date on the Social Charter concept; recommendations on a new second chamber that would be elected, more equitable and generally have a suspensive veto; and an amending formula model that would give vetoes to Quebec, Ontario and each of the Atlantic and Western regions.

The report also proposes general reviews for the Charter of Rights and the division of powers, and it discusses some specific issues or broad principles to guide these reviews. On other issues, such as the Canada Clause, Aboriginal peoples and Quebec, its conclusions parallel the growing national consensus. It does not, however, address many of the federal proposals, such as those on the economic union which this committee says should be taken off the constitutional agenda.

Beaudoin-Dobbie Committee

The 32-member Special Joint Committee on a Renewed Canada held extensive hearings and other meetings in major cities and smaller towns from September to February, and organized five well-publicized conferences. During its five months of hearings, the committee heard from almost all provincial Premiers (or senior Cabinet ministers), but did not receive an official statement from Quebec. It also changed one of its joint chairmen, when Senator G  rald Beaudoin stepped in after Senator Claude Castonguay resigned in November.

The joint committee's purpose was to hear testimony and make recommendations on the federal government's September 1991 proposals. Its report therefore tends to revise and build upon those original proposals. In several areas, however, the report's recommendations are quite different from the federal proposals.

First, the joint committee recommends entrenchment of the *inherent* right of Aboriginal peoples to self-government, addressing one expressed concern of Aboriginal groups; it also says a transition process should be entrenched, with no reference to a time limit. With regard to Senate reform, the report sets out a detailed

proposal defining a body elected by proportional representation, with an "equitable," not equal, distribution of seats among the provinces and territories (it provides two possible models for actual distribution). The reformed Senate would have the same powers as the House of Commons, except on supply bills, but the Commons could override Senate decisions.

The report makes detailed recommendations regarding the division of powers between the federal government and the provinces. These generally add precision to the federal proposals, spelling out several mechanisms that could be used to devolve powers, and they more explicitly address Quebec's expressed needs in the field of culture. The report also adds the idea of a Social Covenant, based largely on the Ontario government's social charter concept, to be entrenched in a revised s. 36 of the *Constitution Act, 1982*. The revised s. 36 would also include the commitment of governments to the economic union, complementing the report's call for revising s. 121. the so-called common market clause.

The report makes only minor adjustments to the distinct society clause by changing wording of the subsection dealing with linguistic minorities. Otherwise, it accepts the proposal to entrench the Supreme Court and its current composition; argues that changes to the notwithstanding clause be postponed; and reports division within the Committee on the issue of property rights. The report urges the amending formula and Quebec's demand for a veto over constitutional position be given top priority, and offers several alternative approaches.

Finally, it is noteworthy that although the report was signed by all committee members as a unanimous document, it does include dissenting positions on several issues. These are indicated here in the appropriate sections in italics.

Alberta Select Special Committee

Established in March 1991, this Committee consisted of 16 Members of the Alberta legislature; it released its final report March 10, 1992. It is the first official report from a province that has traditionally supported the Triple-E model for Senate reform.

This report is the only document so far to categorize all issues according to whether they should be dealt with in the current round of discussion or the next; it also sets out issues that should not be part of constitutional negotiations. Three substantial issues should be resolved in the current round are Senate reform, Quebec's distinct society and Aboriginal issues.

On the first issue, the report says a reformed Senate should provide a counterbalance to the House of Commons. To do so, it must be elected, equal in terms of provincial members, and have effective powers, including an absolute veto over matters within exclusive provincial jurisdiction. Each province should determine the electoral rules for its Senators, though it says Senate elections should coincide with provincial general elections. The Alberta report accepts placing a distinct society clause in the Constitution, but says any such clause should not confer special rights or powers on Quebec. It also recommends that the clause be placed within the *Charter of Rights* and be limited to matters of language, culture and civil law; and that a reference to Quebec's "distinctiveness" be included in the preamble.

The report recommends that the Constitution recognize the inherent right of Aboriginal people to self-government within the context of Canadian federalism. The Aboriginal people should define self-government, in cooperation with federal and provincial governments where the concept affects governmental responsibilities. The report also urges that Aboriginal peoples be included in constitutional discussions related to issues affecting them. Finally, it says recent land transfers from Alberta to the Metis people should be entrenched in the Constitution.

Other issues that the report says should be addressed in the current round are a "national identity clause"; the reaffirmation of individual and provincial equality in the Constitution, particularly regarding the division of powers; the opting-out provision with respect to use of the federal spending power; and the provincial role in Supreme Court appointments.

The next round of constitutional discussions should include detailed reviews of the division of powers and the *Charter of Rights*. Other matters, such as national standards for social programs, official bilingualism and the elimination of internal trade barriers -- while important issues -- should be dealt with outside the Constitution.

Finally, the Alberta report rejects any change to the amending formula that does not treat all provinces as equals. It also says referenda or plebiscites should be used within Alberta to allow voters to express their views on any proposed constitutional amendment.

PART TWO: COMPARATIVE SUMMARY OF DOCUMENTS

FUNDAMENTAL CHARACTERISTICS AND VALUES OF CANADA

Existing Constitution

- Relevant documents include preambles of *Constitution Act, 1867* and the *Constitution Act, 1982*.
- The *Charter of Rights and Freedoms* (*Constitution Act, 1982*) provides that it is to be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians (s. 27). It also provides that the rights and freedoms referred to in it are guaranteed equally to male and female persons (s. 28), and that the guarantee of those rights is not to be construed so as to abrogate or derogate from any Aboriginal, treaty or other rights or freedoms that pertain to the Aboriginal peoples of Canada (s. 25).

Meech Lake Constitutional Accord, 1987

- The Constitution to be interpreted in a manner consistent with recognition that:
 - the existence of French-speaking Canadians, centred in Quebec but also present elsewhere, and English-speaking Canadians, largely outside Quebec but also present in Quebec, constitutes a fundamental characteristic of Canada.
 - Quebec constitutes within Canada a distinct society.
- Parliament and provincial legislatures would be charged with preserving these fundamental characteristics.
- Quebec legislature and government would be charged with preserving and promoting Quebec's distinct identity.
- The Accord provided that this amendment was not to affect the provisions of the Constitution concerning multicultural heritage and Aboriginal peoples (including ss. 25 and 27 above).

1990 Constitutional Agreement, June 1990 (Companion Agreement)

- The Accord would be amended so that the duality/distinct society clause would not affect s. 28 of the Charter (which provides that Charter rights and freedoms are guaranteed equally to both sexes).

- An all-party Special Committee of the House of Commons would hold public hearings (to commence July 1990) and report on the substance and placement of a statement of constitutional recognitions (referred to as a "Canada Clause") to be considered by the First Ministers.
- Opinion of six constitutional law authorities, commissioned by the federal government, on impact of the "distinct society" clause states the clause will *not* be interpreted so as to infringe on sexual equality rights in the Charter.

Allaire Commission Report (Québec Liberal Party), January 1991

- National Assembly will pass its own constitution as the foundation for its political and legal institutions, including its own *Charter of Human Rights and Freedoms*.

Bélanger-Campeau Commission Report, March 1991

- No relevant recommendations.

Report of the Group of 22, June 1991

- No relevant recommendations.

Beaudoin-Edwards Committee Report, June 1991

- No relevant recommendations.

Spicer Commission Report, June 1991

- Preamble in the Constitution should set out common Canadian values and identity.

Northumberland Group Report, June 1991

- No relevant recommendations.

Ontario Discussion Paper, September 1991

- No relevant recommendations.

Federal Proposals, September 1991

- A "Canada Clause" that acknowledges who we are as a people and who we aspire to be should be entrenched in the Constitution in s. 2 of the *Constitution Act, 1867*. The following characteristics and values would be appropriate to be reflected in such a statement:
 - A federation whose identity encompasses the characteristics of each province, territory and community.
 - The equality of women and men.
 - A commitment to fairness, openness and full participation in Canada's citizenship by all people without regard to race, colour, creed, physical or mental disability, or cultural background.
 - Recognition that the Aboriginal peoples were historically self-governing, and a recognition of their rights within Canada.
 - Recognition of the responsibility of governments to preserve Canada's two linguistic majorities and minorities.
 - The special responsibility borne by Quebec to preserve and promote its distinct society.
 - The contribution to the building of a strong Canada of peoples from many cultures and lands.
 - The importance of tolerance for individuals, groups and communities.
 - A commitment to the objective of sustainable development in recognition of the importance of the land, the air and the water, and our responsibility to preserve and protect the environment for future generations.
 - Respect for the rights of its citizens and constituent communities as set forth in the *Canadian Charter of Rights and Freedoms*.
 - The free flow of people, goods, services and capital throughout the Canadian economic union and the principle of equality of opportunity throughout Canada.
 - A commitment to the well-being of Canadians.
 - A commitment to a democratic parliamentary system of government.

- The balance that is especially Canadian between personal and collective freedom on the one hand, and, on the other hand, the personal and collective responsibility that we all share with each other.
- The federal proposals also recommend that a duality/distinct society clause, with a definition of distinct society, be included in the Charter.

Prince Edward Island Report, September 1991

- The preamble to the Constitution should confirm and give expression to the underlying values of Canadian society, through inclusion of a "Canada Clause." This clause should explicitly recognize and endorse the diversity of Canadian society.

Manitoba Task Force Report, October 1991

- The Constitution should include a Canada Clause that recognizes the fundamental characteristics of Canada, including:
 - a commitment to a united Canada and recognition of the equality of the provinces (recognizing that all provinces may not share the exact same duties and responsibilities);
 - recognition of the Aboriginal peoples as constituting the original people and a fundamental characteristic of Canada;
 - the status of English and French as the official languages at the federal government level;
 - recognition of the unique place and role of the province of Quebec in Canada;
 - recognition of the contribution to Canada of our multicultural society; and
 - an affirmation that the rights and freedoms contained in the *Charter of Rights and Freedoms* apply to all Canadians.
- The Task Force supports recognition of multiculturalism as a fundamental characteristic of Canada. A regular review of policy and programs in this area is recommended.

Nova Scotia Working Committee, November 1991

- Freedom, and the rights and responsibilities which underpin it, are key elements in the set of values that binds Canadians together.
- Committed to multiculturalism as an essential element of the Canadian identity.
- Canada should be more generous, caring and supportive of the country's poorer regions. More effort should be made to include all Canadians in the mainstream of Canadian life, regardless of sex, ethnic origin, race, disability, language, culture, religion, sexual orientation, social status or profession.
- No specific recommendations regarding Canada Clause or preamble to the Constitution.

New Brunswick Commission, January 1992

- A Canada Clause that reflects the values and fundamental characteristics of Canada should be included in s. 2 of the *Constitution Act, 1867*. Among the characteristics to be included in this clause are:
 - the existence of the English and French linguistic communities throughout the country, and the responsibilities of the federal and provincial governments to support development of both communities;
 - a recognition of the special responsibility of Quebec to preserve and promote its distinctiveness;
 - an affirmation of the value of sharing of the country's wealth equitably among Canadians and thereby providing for greater equality of opportunity;
 - a recognition of the inherent rights of Aboriginal peoples;
 - a recognition of our responsibility as a developed nation to share our wealth with less fortunate peoples of the world; and
 - an affirmation of the rights and freedoms contained in the *Canadian Charter of Rights and Freedoms*.

York University Project, January 1992

- The proposal to include a Canada Clause in the Constitution is supported.

- The proposed recognition in a Canada Clause of Quebec's special responsibility to preserve and promote its distinct society is supported.

Three Nations Concept, February 1992

- Within the Canadian state, three national entities uneasily coexist: "English" Canada, Quebec and the Aboriginal peoples. The issue is whether these three distinctive sets of identifications and aspirations can be reconciled, while maintaining Canada's autonomy against the politically erosive economic forces of continentalism and globalization.
- "English" Canada is a multi-ethnic and multicultural community bound together by common history and a shared sense of pride in the distinctiveness of Canada on the North American continent.
- Quebec is and always has been a distinct society, not only based on its desire to preserve its French language and culture but also based on its network of social and economic organizations and a government with a long history in the democratic tradition. These state elements qualify Quebec as a national community, unique in North America.

Ontario Select Committee, February 1992

- A Canada Clause should be developed, to be placed in the preamble to the Constitution.
- The Canada Clause should address the values of Canada:
 - democratic participation by all Canadians, whatever their race, gender, religion, culture, or physical or mental disability; and concern for the well-being of all Canadians.
 - respect for the diversity of individuals, groups and communities; for the special responsibility of the province of Quebec to preserve and promote its distinct society; and for the contribution of people from many cultures and lands to the development of Canada;
 - the significance of the First Nations and their long stewardship of this land;
 - our historical traditions of a stable British parliamentary democracy, linguistic duality, and recognition and protection of cultural and linguistic minorities; and
 - the land itself, and respect for the natural environment.

Beaudoin-Dobbie Committee, March 1992

- We recommend that a statement of Canada's identity and values be included in a prominent place in the Constitution. We recommend the following preamble:

We are the people of Canada, drawn from the four winds of the earth, a privileged people, citizens of a sovereign state. Trustees of a vast northern land, we celebrate its beauty and grandeur. Aboriginal peoples, immigrants, French-speaking, English-speaking, Canadians all, we honour our roots and value our diversity. We affirm that our country is founded upon the principles that acknowledge the supremacy of God, the dignity of each person, the importance of family, and the value of community. We recognize that we remain free only when freedom is founded on respect for moral and spiritual values, and the rule of law in the service of justice. We cherish this free and united country, its place within the family of nations, and accepting the responsibilities privileges bring, we pledge to strengthen this land as a home of peace, hope and goodwill.

- We further recommend that a Canada Clause be included in s. 2 of the *Constitution Act, 1867* and as such be interpretative in effect. We recommend the following Canada Clause:

2. We, Canadians all, convinced of the nobility of our collective experiment, hereby renew our historic resolve to live together in a federal state;

We acknowledge that we are deeply indebted to our forebears:

the Aboriginal peoples, whose inherent rights stem from their being the first inhabitants of our vast territory to govern themselves according to their own laws, customs and traditions for the protection of their diverse languages and cultures;

the French and British settlers, who to this country brought their own unique languages and cultures but together forged political institutions that strengthened our union and enabled Quebec to flourish as a distinct society within Canada; and

the peoples from myriad other nations, scattered the world over, who came to our shores and helped us greatly to fulfil the promise of this fair land;

We reaffirm our profound attachment to the principles and values that have drawn us together, enlightened our national life, and afforded us peace and security, such as our unshakable respect for the institutions of Parliamentary democracy; the special responsibility of Quebec to

preserve and promote its distinct society; the right and responsibility of Aboriginal peoples to protect and develop their unique cultures, languages and traditions; a profound commitment to the vitality and development of official language minority communities; an abiding obligation to assure the equality of women and men; and the recognition of the irreplaceable value of our multicultural heritage;

We pledge to honourably discharge our responsibility to our children, so that they may do the same for their own, of ensuring their prosperity and the integrity of the environment.

Therefore we, Canadians all, formally adopt this, our Constitution, including the Canadian Charter of Rights and Freedoms, as the solemn expression of our national will and hopes.

Alberta Select Special Committee, March 1992

- As a priority item, the preamble to the Constitution should contain a brief and inspirational clause reflecting the basic beliefs and values of Canadians. It must express, among other matters, our national commitment to a strong, united country, the equality of the people and provinces of Canada, our commitment to the social and economic well-being of all Canadians, and our respect for the diverse characteristics of Canadian society.
- The above "national identity" clause should include a reference to Quebec's distinctiveness, and to the Aboriginal people as the original inhabitants of this land.
- The Constitution must reflect and embody the equality of the people of Canada, and of all the provinces. The concept of equality must take into account historical, cultural and economic realities; equality is sometimes better served through different rather than uniform treatment.
- As a sub-constitutional matter, multiculturalism policies should support the contributions of the various peoples to Canada, and should be designed to eliminate racial and cultural discrimination. Immigration policies should focus on assisting people to overcome barriers to achieve full participation in Canadian society.
- As a sub-constitutional matter, Canadian school curricula should be reviewed to assess areas for improvement with respect to the teaching of Canadian history, literature, geography, economy, civics and science to embrace a more thorough understanding of Canada. Similarly, exchange programs and travel incentives within Canada should be promoted.

CHARTER OF RIGHTS AND FREEDOMS

Existing Constitution

Constitution Act, 1982 (Part I, *Charter of Rights and Freedoms*), ss. 1-34; ss. 35(4), 52 and 59.

- The Charter protects a range of primarily civil and political rights including the fundamental freedoms of conscience and religion, thought, belief, opinion and expression, peaceful assembly and association, democratic (ie., right to vote) and mobility rights, and legal (ie., right to life, liberty and security of the person), equality and language rights.
- The Charter states every person is equal before the law regardless of race, national or ethnic origin, religion, sex, age, or mental or physical disability. The Charter allows for laws, programs and activities designed to improve the condition of disadvantaged people.
- If a law violates or is inconsistent with the Charter, then it is of no force or effect (s. 52(1)). Decisions as to whether a law or action is inconsistent with the Charter are made by the courts. As a result, the Supreme Court of Canada ultimately determines whether a law or action violates the Charter.
- The protection of these rights is subject to "reasonable limits." A determination of whether a limit or law is reasonable involves a consideration of the following:
 - the importance of the objective of the law;
 - how carefully designed the measures are to achieve the objective;
 - whether there are other methods of achieving the objective which would infringe the right to a lesser extent; and
 - the relative importance of the objective and the infringement of the right in question;
- The rights in the Charter vary in terms of who is entitled to benefit from them. Where the right is guaranteed to "everyone," "any person," "any member of the public," or "anyone," the right has generally been interpreted to apply to both individuals and corporations or other similar entities. On the other hand, where the terms "every individual" or "every citizen" are used, the right is not likely to be extended to corporations.
- The Charter applies to the actions of Parliament and the government of Canada, and to the actions of the Legislatures and governments of each province, in relation to all matters within their respective authorities. It places restrictions on their powers by preventing the exercise of those powers in a

way which would infringe a person's rights under the Charter. The Charter does not apply so as to restrict the actions of private persons.

- The Charter is to be interpreted consistent with the preservation and enhancement of multicultural society, and is not to be construed so as to abrogate or derogate from any Aboriginal, treaty or other rights and freedoms that pertain to the Aboriginal peoples of Canada. Such rights and freedoms apply equally to male and female persons.
- Parliament or any provincial legislature can "override" application of s. 2 and ss. 7-15 of the Charter by using the "notwithstanding clause" contained in s. 33. This is done by expressly declaring within a legislative act that it shall operate notwithstanding the above sections. Such a declaration must be re-enacted every five years to remain valid.
- The *Constitution Act, 1982* (s. 36) states that Parliament and the legislatures, together with the government of Canada and the provincial governments, are committed to promoting equal opportunities for the well-being of Canadians, furthering economic development to reduce disparity in opportunities, and providing essential public services of reasonable quality to all Canadians. Parliament and the government of Canada are also committed to the principle of making equalization payments to assist poorer provinces in providing public services.

Meech Lake Constitutional Accord, 1987

- The Constitution, including the *Charter of Rights and Freedoms*, would be interpreted in a manner consistent with recognition that:
 - French-speaking Canadians, centred in Quebec but also living elsewhere, and English-speaking Canadians, largely outside Quebec but also present in Quebec, are fundamental characteristics of Canada.
 - Quebec constitutes within Canada a distinct society.
- Parliament and provincial legislatures would be charged with preserving these fundamental characteristics.
- Quebec legislature and government would be charged with duty to preserve and promote its distinct identity.
- Duality/distinct society clause would not override rights of ethnic minorities and native peoples.

1990 Constitutional Agreement, June 1990 (Companion Agreement)

- Section 28 of the Charter of Rights added to s. 16 of the *Constitution Amendment, 1987* (Meech Lake Accord) to ensure that "distinct society" clause does not infringe on sexual equality rights.
- Legal opinion of six experts that the distinct society clause will not infringe or deny the Charter of Rights, and that the Constitution, including ss. 91 and 92 of the *Constitution Act, 1867* (respecting federal and provincial powers), will be interpreted in a manner consistent with the distinct society/duality society clause.

Allaire Commission Report (Québec Liberal Party), January 1991

- Quebec would pass its own constitution as the foundation for its political and legal institutions.
- Quebec *Charter of Human Rights and Freedoms* would be entrenched in new Quebec constitution.
- The new political order in Quebec must guarantee the same existing respect for every person's rights and freedoms, and promote the full development of cultural, linguistic and religious communities in Quebec.
- Specifically, it must safeguard the recognized historic rights of anglophone Quebecers, including the right to their own social and cultural institutions; and it will continue to guarantee the rights of allophone (non-French, non-English language) communities in Quebec to develop as cultural communities.
- It will preserve all rights recognized by the Constitution of Canada and the courts.

Bélanger-Campeau Commission Report, March 1991

- Efforts should be stepped up to ensure Quebecers of all origins enjoy genuinely equal opportunities.

Report of the Group of 22, June 1991

- Committed to the *Charter of Rights and Freedoms*.
- Committed to fully establishing the four economic freedoms: free flow of people, goods, services and capital within Canada.

Beaudoin-Edwards Committee Report, June 1991

- No relevant recommendations.

Spicer Commission Report, June 1991

- Include a preamble in the Constitution setting out Canadian common values and identity.
- Eliminate federal funding for multiculturalism programs, except those to provide and promote immigrant orientation, as well as funding to combat racism and promote racial equality.
- Government should initiate bolder, more imaginative public information programs on the benefits of cultural diversity.

Northumberland Group Report, June 1991

- No relevant recommendations.

Ontario Discussion Paper, September 1991

- The Constitution should include a Social Charter, which would serve as a guide to governments as they develop and strengthen the social contract. It comprises the following four basic elements. (The details of these elements would be determined after extensive public discussion.)
 - A statement of the values and principles that Canadians wish to affirm and that should guide governments in social policy.
 - Institutions for developing, protecting, negotiating, monitoring and enforcing policies that give concrete expression to these values and principles.
 - A provision for broad public participation to ensure that policies, programs and services continue to be responsive to public need.
 - A recognition that national sharing is required for realizing the Social Charter's principles across the country.
- These principles can be entrenched in the Constitution in the following ways, either through each approach alone or through a combination of approaches:
 - Entrench a general clause stating that the government of Canada and the provinces, in enacting laws and designing and implementing

programs, shall strive to protect and promote the equal access of all to adequate health care, education, housing, income security, a clean and safe environment, and the basic necessities of life. Such a clause would not be enforceable by the courts but would include a large number of issues not easily identifiable as individual rights.

- Strengthen and make more precise s. 36 of the *Constitution Act, 1982*, which calls on governments to provide essential public services of reasonably comparable quality to all Canadians. An amended s. 36 could enumerate services to be provided and call on governments to enact laws or develop programs that would give concrete expression to these services. In certain areas, where programs are well-developed and public expectations well-defined, a clause could entrench the principles that these services should be provided equally to all and be publicly administered. Some elements of this option could be enforced by the courts.
- Entrench an obligation on governments to ensure social programs such as social assistance, pensions, education and unemployment insurance embody a specific set of norms or standards, possibly including comparable norms to those of the *Canada Health Act* (comprehensiveness, universality, portability, public administration and accessibility).
- Build on existing mobility rights in the Charter of Rights, expanding s. 6(2)(3) to protect the rights of Canadians to receive social assistance, health care, education and other social services in any province without special requirements. These rights would be enforceable by the courts.
- Options for implementing and enforcing the Social Charter might include the following:
 - Replace Senate with a new institution allowing provincial governments to have a more significant role in developing national social programs.
 - Leave details of institutional arrangement to federal-provincial negotiation. Social Charter would only include a general clause requiring governments to implement principles included in the Charter.
 - Make responsibility for the Social Charter the prime function of a substantially reformed, elected Senate.

Federal Proposals, September 1991

- The Government of Canada reaffirms the basic rights set out in the Charter as a fundamental feature of the Constitution.

- The Charter should be amended to guarantee property rights.
- It is proposed that the votes required for Parliament or a provincial legislature to invoke the override provision of the Charter of Rights (s. 33) be changed from a simple majority to 60% of its members.
- A section should be included in the Charter reading as follows:
 - 25.1 (1) This Charter shall be interpreted in a manner consistent with
 - (a) the preservation and promotion of Quebec as a distinct society within Canada; and
 - (b) the preservation of the existence of French-speaking Canadians, primarily located in Quebec but also present throughout Canada, and English-speaking Canadians, primarily located outside Quebec but also present in Quebec.
 - (2) For the purposes of subsection (1), "distinct society", in relation to Quebec, includes
 - (a) A French-speaking majority; (b) a unique culture; and (c) a civil law tradition.

Prince Edward Island Report, September 1991

- The Charter of Rights should not be included as part of the current constitutional process, and there should be no amendments or additions at this time without further consultation or discussion.

Manitoba Task Force Report, October 1991

- A process should be established in the near future to review Charter rights, both individual and collective. This review should provide an opportunity to discuss issues related to the notwithstanding clause.
- The Task Force recognizes the Aboriginal peoples' inherent right to self-government within the Canadian constitutional framework and recommends that this be entrenched in the Constitution.

Nova Scotia Working Committee, November 1991

- The inclusion of property rights in the Constitution is opposed.

- Governments must do more to enforce rights guaranteed to all Canadian under the Charter, including putting greater emphasis on achieving equality and combatting racism.
- The place of the notwithstanding clause (s. 33) in the Charter should be studied further before any action is taken.

New Brunswick Commission, January 1992

- The Charter should include a clause recognizing Quebec as a distinct society, as proposed by the federal government.
- The Charter should affirm the responsibility of Parliament and the government of Canada to *preserve and promote* the English and French linguistic communities throughout the country; and the responsibility of provincial legislatures and governments to *preserve* the same linguistic communities.

Ontario Social Charter, February 1992

- Section 6 of the Charter should be amended to expand the current definition of mobility rights with respect to social benefits.

York University Project, January 1992

- A guarantee of property rights should not be included in the Constitution.
- The notwithstanding clause (s. 33) of the Charter should be retained in its present form.

Three Nations Concept, February 1992

- No relevant recommendations.

Ontario Select Committee, February 1992

- The notwithstanding clause (s. 33) should be amended to provide that a declaration invoking s. 33 ceases to have effect after three years.
- The Charter should be reviewed to identify ways in which it could be improved. All aspects of the Charter should be open to review, but the following matters in particular should be examined:

- whether there are methods to make the enforcement of the Charter more accessible.
- whether the Charter should state that the integration of persons with disabilities can best be achieved by their inclusion in the social, political and economic mainstream through the removal of barriers.
- whether s. 15 should be amended to provide that sexual orientation and language are prohibited grounds of discrimination.
- whether s. 27 should be amended to provide that it includes the multiracial, as well as the multicultural, heritage of Canada.
- whether s. 24 should be amended to clarify the remedies available to courts to rectify conditions deemed to be discriminatory or the causes of disadvantage.
- whether the terms in which it is proposed to recognize Canada's linguistic duality are sufficient.
- whether it should be possible to interpret the constitutional provisions regarding the English and French languages to include the sign languages of Deaf people.
- whether s. 14 should be amended to extend the right to the assistance of an interpreter to all legal proceedings.
- whether s. 7 should be amended to include a right to the enjoyment of property.
- Governments should consider options through which the existence of barriers encountered by persons with disabilities could be periodically reviewed.

Beaudoin-Dobbie Committee, March 1992

- Because of the complex issues raised by the federal proposal to further restrict the use of the notwithstanding clause (s. 33), consideration of this proposal should be postponed to a later round of constitutional reform.
- *However, New Democratic Party members of the Committee recommend that s. 15 of the Charter be exempted from s. 33 in order to provide minorities true protection against rights abuse. Further, the NDP members recommend that s. 27 of the Charter be amended to provide interpretative effect, specifically that the Charter shall be interpreted in a manner consistent with the*

preservation and enhancement of the multicultural heritage of Canadians, and with the preservation and promotion of racial and ethnic equality.

- The fundamental rights and freedoms of all Canadians, including the equality of the rights of men and women, ought to receive full constitutional protection.
- *The committee indicated it was divided on the federal proposal to include property rights in the Charter. The government members supported the proposal, while the opposition members disagreed with it.*

Alberta Select Special Committee, March 1992

- In the next round of constitutional discussions, the First Ministers should meet to review the *Charter of Rights* among the other matters, such as the amending formula, which they are constitutionally required to review by 1997.

ABORIGINAL ISSUES

Existing Constitution

Selected sections: ss. 91 (24), 92 of *Constitution Act, 1867*; s. 25 of the *Constitution Act, 1982* (Charter of Rights), ss. 35, 35.1 of *Constitution Act, 1982*.)

- *Royal Proclamation* (1763) defined a large tract of land to be reserved for Indian peoples. This proclamation:
 - declared that the Governors of Quebec, East Florida and West Florida could not grant warrants of survey or land patents for the reserved lands.
 - forbade non-Indians from buying or settling on such land without special leave from the Crown.
 - required all non-Indians living on land reserved for Indians to leave.
 - provided that the Indians might sell any of the land to the Crown through a treaty.
 - required any non-Indian wishing to trade with the Indians to acquire a licence to do so and give security to follow regulations governing such trade.
- S. 91 (24) of the *Constitution Act, 1867* states Indians and lands reserved for Indians are under exclusive federal jurisdiction. S. 92 sets out areas of

exclusive provincial jurisdiction. The general rule is that provincial laws apply to Indians and land set aside for Indians, with certain exceptions.

- S. 25 of the Charter of Rights states that the Charter does not take away any Aboriginal rights and freedoms recognized by the Royal Proclamation of 1763 or acquired through land settlements.
- S. 35 of the *Constitution Act, 1982* recognizes and affirms existing Aboriginal and treaty rights (including rights acquired through existing or future land claims settlements), defines Aboriginal peoples as Indian, Inuit and Metis, and states that rights apply equally to male and female persons.
- The federal government is committed by s. 35.1 (added by amendment in 1983) to invite representatives of the Aboriginal people of Canada to participate in discussions at a constitutional conference if any changes are made to any of the above sections of the Constitution.

Meech Lake Constitutional Accord, 1987

- No relevant recommendations.

1990 Constitutional Agreement, June 1990 (Companion Agreement)

- Representatives of Aboriginal peoples would be invited by the Prime Minister to First Ministers' constitutional conferences, to be held once every three years, to participate in discussion of matters of interest to Aboriginal peoples.

Allaire Commission Report (Québec Liberal Party), January 1991

- Quebec and the federal government would share powers in respect to native affairs.

Bélanger-Campeau Commission Report, March 1991

- Negotiations leading towards Aboriginal self-government should be pursued promptly and vigorously with representatives of Quebec's Aboriginal peoples. This process should not wait until the larger question of Quebec's political and constitutional future is finally settled.
- A process for settling existing disputes should be adopted quickly, in consultation with the Aboriginal peoples.

Report of the Group of 22, June 1991

- Constitution should recognize right of Aboriginal peoples to self-government by amendment of s. 35 of *Constitution Act, 1982*.
- S. 35 should protect self-government agreements, whether reached as part of land claims settlements or separately.
- There should be seats reserved in the Senate and House of Commons for Aboriginal peoples.
- Aboriginal representatives should be included where appropriate at all First Minister and other federal-provincial conferences, and in all bodies responsible for setting or enforcing national standards.

Beaudoin-Edwards Committee Report, June 1991

- Any amendment to the Constitution directly affecting Aboriginal peoples should require their consent. (Specifically, sections under **Existing Constitution**.)
- Representatives of Aboriginal peoples should be invited to participate in all future constitutional conferences.
- The Constitution should provide for a national conference on the rights of Aboriginal peoples to be held every two years, with the first such conference to be held no later than one year after amendment comes into force.

Spicer Commission Report, June 1991

- Fair, prompt settlement of land and treaty claims of Aboriginal peoples.
- Supports native self-government and urges that native people be actively involved in defining and implementing self-government project.
- Federal government department administering Indian Affairs and the *Indian Act* should be phased out as native self-government emerges.
- Canada should officially recognize contribution and history of Aboriginal peoples as the First Nations of Canada.

Northumberland Group Report, June 1991

- The group supports justice for the First Nations, and supports their aspirations for greater autonomy and a more just share of resources. It does not offer a set of prescriptions as to what should be done.

Ontario Discussion Paper, September 1991

- No relevant recommendations.

Federal Proposals, September 1991

- The Government of Canada is committed to addressing the appropriate roles and responsibilities of governments with respect to the Metis.
- The Government of Canada is committed to ensuring that Aboriginal peoples participate in the current constitutional deliberations.
- The Constitution should be amended to entrench a general right, enforceable by the courts, to Aboriginal self-government within the Canadian federation and subject to the Charter of Rights, with the nature of the right to self-government described so as to facilitate interpretation of that right by the courts. To ensure a smooth transition, the Government proposes
 - there be a commitment by governments to negotiate self-government agreements with the Aboriginal peoples.
 - there be regularly scheduled First Ministers' conferences on this subject.
 - the general enforceability of the right be delayed for up to 10 years, from the time the amendment is adopted to allow an opportunity for the Government of Canada, the governments of the provinces and the territories, and Aboriginal peoples to come to a common understanding of the content of this right.
 - agreements reached in negotiations during this initial stage will proceed and agreements reached will receive constitutional protection as they are developed.

The Special Joint Committee should examine the broad parameters of the right to be entrenched in the Constitution and the jurisdictions that Aboriginal governments would exercise.

- The Constitution should be amended to entrench a process to address Aboriginal matters that are not dealt with in the current constitutional

deliberations and to monitor progress made in the negotiations of self-government agreements.

- Aboriginal peoples would be guaranteed representation in the reformed Senate.
- A "Canada Clause" that acknowledges who we are as a people and who we aspire to be should be entrenched in the Constitution in section 2 of the *Constitution Act, 1867*. Among the 14 characteristics and values that would be appropriate to be reflected in such a statement are:
 - Recognition that the Aboriginal peoples were historically self-governing, and a recognition of their rights within Canada.

Prince Edward Island Report, September 1991

- Aboriginal rights to self-government must be recognized in principle during the present round of constitutional reform as a first step to their fuller participation in the future of Canada.
- The Aboriginal peoples of Canada should formally participate during the process of constitutional reform. The Aboriginal peoples themselves should determine precisely how they would participate and how they would be represented.

Manitoba Task Force Report, October 1991

- The Aboriginal peoples' inherent right to self-government within the Canadian constitutional framework is recognized, and should be entrenched in the Constitution.
- A process should be created, acceptable to Aboriginal people and entrenched in the Constitution, that would work towards a definition and practical implementation of Aboriginal self-government.
- The Aboriginal peoples have the right to participate in all constitutional reform processes.
- An agenda should be developed, in consultation with Aboriginal peoples, to address Aboriginal concerns within Manitoba. This agenda should be actively pursued by the Manitoba government.

Nova Scotia Working Committee, November 1991

- The way the Mi'kmaq and other Aboriginal people have been treated since the arrival of non-Aboriginal people in this country is a national disgrace for

which we all bear a burden of guilt and responsibility. Governments at all levels have been especially guilty of creating and perpetuating this situation.

- The time has come to reach an equitable negotiated settlement with Aboriginal people regarding their rights and status within Canada, and the Nova Scotia government should be a strong advocate of this objective.
- Aboriginal rights, their rights to self-government and the promises that have been made to Aboriginal peoples in treaties should be honoured.
- In particular, the following steps should take place:
 - the inherent rights of all Aboriginal peoples to self-government should be entrenched in the Constitution;
 - Aboriginal people should be given the opportunity to explain to other Canadians, through the constitutional process, what they mean by self-government;
 - the shape and details of self-government must be defined in negotiations between Aboriginal people and governments in Canada, negotiations in which Aboriginal representatives are full partners, chosen by their own people;
 - negotiations must be concluded successfully in the shortest time possible;
 - to be valid, the results of these negotiations must be fully acceptable to Aboriginal people; and
 - the results of these negotiations should be entrenched in the Constitution.

New Brunswick Commission, January 1992

- The Constitution should be amended to recognize and affirm the historic role and contribution of Aboriginal people in Canada's development, in a way that underlines the importance of that contribution and engenders a relationship of mutual respect and equality among all Canadians.
- The federal and provincial governments should ensure the full participation of representatives of Aboriginal people in constitutional negotiations. Likewise the Constitution should be amended to ensure that no amendment that affects Aboriginal people in any way may be made without the consent of their representatives.

- The Constitution should be amended to recognize and affirm the inherent Aboriginal right to self-government within Canada's Constitution. More specifically,
 - the federal and provincial governments should negotiate self-government agreements with representatives of Aboriginal people;
 - such agreements should be entrenched in the Constitution; and
 - the negotiation of self-government agreements include provisions for access to resources commensurate with the scope and nature of each agreement.
- The federal and provincial governments should move, in concert with the representatives of Aboriginal people, towards a just definition and implementation of the treaty rights that exist in each province.
- The federal and provincial governments should work expeditiously with representatives of Aboriginal people to identify and settle, in a just and equitable manner, those land claims that exist in each province or region.

York University Project, January 1992

- The Constitution should be amended to recognize the inherent right to Aboriginal self-government within the context of the existing Canadian Constitution.
- The governments established by the Aboriginal peoples should be subject to the Charter of Rights in the same manner as are other levels of government, and should have the same entitlement to invoke ss. 1 and 33. Further, these Aboriginal governments should be subject to the same kind of special interpretation of their powers as that proposed for Quebec under the distinct society clause.
- There should be no formal transition period between the entrenchment of this right and its effectiveness. However, non-Aboriginal governments should be constitutionally obliged to negotiate self-government arrangements that are appropriate to the circumstances of Aboriginal peoples across Canada. These agreements should give practical meaning to the general right to self-government, and would themselves be constitutionally protected.
- Representatives of national Aboriginal organization should be at a federal-provincial-Territorial-Aboriginal meeting, recommended to take place in April 1992 after the release of the report of the federal Special Joint Committee.

Three Nations Concept, February 1992

- Any constitutional response to the Aboriginal peoples must begin with entrenchment in the Constitution of the inherent right to self-government for the Aboriginal peoples. It is a basic right of the Aboriginal people who were here long before the first Europeans.
- How this right would be realized by particular bands should be worked out between them and the federal and provincial governments, once that right itself is recognized.

Ontario Select Committee, February 1992

- It should be recognized by all parties that access to resources and lands is an integral part of Aboriginal self-government.
- The fiduciary responsibility of the federal government towards Aboriginal people should be affirmed. As part of this responsibility, the *Indian Act* should be revised, as negotiated with the Aboriginal people of Canada.
- Representative Aboriginal organizations should be recognized as full participants in the constitutional process; Aboriginal people themselves will decide who represents them.
- The "parallel process" of constitutional negotiations on Aboriginal issues is endorsed, including formal consultation with urban Aboriginal people, women, youth and Elders.
- The federal government proposal that a constitutional process to address Aboriginal constitutional issues and to monitor other important Aboriginal issues should be entrenched is supported.
- The importance of the Aboriginal peoples to the identity and development of Canada should be recognized in the Canada Clause.
- The inherent right of Aboriginal peoples to self-government within the Canadian constitutional framework should be recognized and this recognition should be entrenched in the Constitution without a deferral period.
- When Aboriginal people have worked out a definition of self-government, provincial and federal governments must work with them to create a process, including a dispute-resolution mechanism, to implement the right. This process could be entrenched in the Constitution.
- Ordinary rights available to other Canadians under the Charter should be available to all Aboriginal people until the process of implementation of self-government is completed.

Beaudoin-Dobbie Committee, March 1992

- The inherent right of Aboriginal peoples to self-government should be entrenched in s. 35 of the *Constitution Act, 1982*.
- Applying self-government will require negotiating the appropriate jurisdictions that self-governing Aboriginal communities will exercise. A transition process to identify the responsibilities exercised by Aboriginal governments and their relationship to federal, provincial and territorial governments should be entrenched in the Constitution.
- The fundamental rights and freedoms of all Canadians, including the equality of the rights of men and women, ought to receive full constitutional protection.
- The federal government should respond to the representations of the Metis for access to a land and resource base.
- A small agency jointly managed by the federal government and representatives of the Aboriginal peoples should be set up to administer federal treaty obligations, fiduciary and trust responsibilities, and the provision of fiscal transfers that continue after the implementation of the various forms of Aboriginal self-government.
- In order to protect the Aboriginal and treaty rights guaranteed to Aboriginal peoples by the Constitution:
 - any constitutional amendment directly affecting Aboriginal peoples should require their consent;
 - representatives of Aboriginal peoples should be invited to all future constitutional conferences dealing with such matters referred to above; and
 - the Constitution should provide that a constitutional conference be held within two years after the amendment regarding the inherent right of Aboriginal self-government comes into force.
- If they wish, the Aboriginal peoples should be guaranteed representation in a reformed Senate. In particular, the mechanisms and options of the Royal Commission on Electoral Reform and Party Financing, including the concept of Aboriginal constituencies, should be considered.
- The role of the Indian, Inuit and Metis peoples in the development of Canada, and their inherent rights as the First Peoples should be recognized in the proposed Canada Clause. The clause should also recognize the right and

responsibility of Aboriginal peoples to protect and develop their unique cultures, languages and traditions.

Alberta Select Special Committee, March 1992

- As a priority item, a reference to the Aboriginal people as the original inhabitants of this land must be included in the proposed national identity clause.
- Representatives of the Aboriginal peoples must be full participants in any process leading to constitutional amendments that directly affect them.
- The Alberta Metis Settlement Accord and the Alberta/Metis Nation of Alberta Association Framework Agreement are supported as models of Aboriginal self-government.
- The land transfers from the province of Alberta to the Metis people provided for under the 1990 Letters Patent and *Metis Settlements Land Protection Act* should be entrenched in the Constitution, through a resolution cooperatively initiated by the governments of Alberta and Canada.
- The Constitution should recognize the inherent right of the Aboriginal peoples of Canada to self-government. This recognition should be defined in the Constitution within the framework of Canadian federalism. The Aboriginal peoples should define self-government. Representatives of the Aboriginal peoples, and the federal and provincial governments, should work together to define, by agreement, the implementation of Aboriginal self-government, where such self-government affects areas of federal or provincial constitutional responsibility.
- As a sub-constitutional matter, the economic and social disparities between non-Aboriginal and Aboriginal Canadians should be addressed as a national priority. As part of this process, Canadian governments and Aboriginal communities should commit themselves to the prompt resolution of all outstanding land claims.

CONSTITUTIONAL CHANGE AND THE ECONOMY

Existing Constitution

Selected sections: *Constitutional Act, 1867*, ss. 91(2), 92(13), 92A and 121; *Constitutional Act, 1982*, ss. 6 and 36.

- Powers of Parliament established as exclusive authority in specified fields, including the following affecting the economy:
 - Public debt and property;
 - Regulation of trade and commerce;
 - Raising of money by any mode or system of taxation;
 - Borrowing money on public credit;
 - Navigation and shipping;
 - Currency and coinage;
 - Banking, incorporation of banks and issue of paper money, etc., including savings banks, bills of exchange and promissory notes, interest, legal tender, bankruptcy and insolvency;
 - Weights and measures; and
 - Patents and copyrights.
- Exclusive powers of provincial legislatures established, including the following affecting the economy:
 - Direct taxation within the province to raise revenue for provincial purposes;
 - Management and sale of public lands belonging to the province, and of timber on such land;
 - Various liquor, restaurant, retail and auction licences to raise revenue for provincial or municipal purposes;
 - Public works respecting railways, canals, telegraph lines, etc;
 - Property rights within the province;
 - Laws relating to exploration, development, conservation and management of non-renewable resources in the province, and to

development, conservation and management of electrical power facilities;

- Laws relating to export from the province to other parts of Canada of primary production of non-renewable resources and forestry resources, and of electrical power, providing there is no discrimination in prices or supply; and
- Laws to raise money by taxation of above resources and electrical power, provided taxation does not differentiate between exported production and non-exported production.
- All produce and manufactured goods can pass freely from one province to any other. (This has been interpreted to refer only to interprovincial tariff barriers.)
- All Canadian citizens and permanent residents can live and work in any province, subject to provincial laws and practices that do not discriminate against people from other provinces (excluding reasonable residency requirements for the receipt of public social services). This does not limit a government's right to implement any law, program or activity aiming to improve conditions of the disadvantaged in province where the rate of employment is lower than the national employment rate. For example, a law which required preference in employment in a particular industry to be given to residents of a particular province might be permitted even though it discriminates against people from other provinces.
- Parliament and provincial legislatures, and the respective governments, are committed by the *Constitution Act, 1982* to promoting equal opportunities for the well-being of Canadians, furthering economic development to reduce disparities in opportunities, and providing essential services of reasonable quality to all Canadians.
- Parliament and the federal government are committed to making equalization payments to ensure provinces have sufficient revenue to provide reasonably comparable levels of services at reasonably comparable levels of taxation.

Meech Lake Constitutional Accord, 1987

- Entrenches annual First Ministers' meetings on the state of the Canadian economy and other matters as appropriate.
- A province that chooses to opt out of national shared-cost programs established by the federal government in areas of exclusive provincial jurisdiction shall receive reasonable compensation from Ottawa, providing it carries on its own program or initiative that is compatible with national objectives.

1990 Constitutional Agreement, June 1990 (Companion Agreement)

- No relevant recommendations.

Allaire Commission Report (Québec Liberal Party), January 1991

- Quebec should exercise full sovereignty in areas already defined as exclusively in its sphere of authority, including:
 - housing, manpower and training, natural resources, and tourism.
- Quebec should assume responsibility in residual areas, and in areas of shared or federal jurisdiction, including:
 - agriculture, unemployment insurance, communications, regional development, energy, environment, industry and commerce, language, research and development, public security, and income security.
- The federal government should exercise exclusive authority in these areas affecting the economy:
 - customs and tariffs, currency and common debt, and equalization.
- Quebec and federal government should share powers in these areas affecting the economy:
 - taxation and revenue, financial institutions, fisheries, foreign policy, post office and telecommunications, and transport.
- Federal government's spending powers should be eliminated in Quebec's areas of exclusive jurisdiction.
- Other provincial (or new regional) governments could assume similar powers as Quebec, or delegate some powers back to the federal government.
- Strengthen the Canadian economic union by following these guidelines:
 - Free mobility of goods, people and capital.
 - Maintain customs and monetary union.
 - Restore balance to Canadian public finances by reducing the size of the central state and imposing limitations on its budgetary practices, including setting specific targets to limit deficits and curtail taxation power.

- Reform Bank of Canada to ensure regional representation and independence.

Bélanger-Campeau Commission Report, March 1991

- Establish National Assembly commission to study any proposals of economic partnership from Canada.

Report of the Group of 22, June 1991

- Commitment to four economic freedoms (free movement of people, goods, services and capital), with consideration given to an administrative tribunal to implement and resolve disputes between provinces.
- Economic regulation and development:
 - Broader interpretation of federal powers in trade and commerce. Responsibility for international treaties would remain federal, but with arrangements for provincial involvement when their interests are at stake.
 - Regulation of competition should remain a federal power.
 - Securities market should be federally regulated.
 - Mutual recognition by all provinces of financial regulations to ensure free flow of capital.
 - Interprovincial and international transportation should be regulated federally, and intraprovincial transportation regulated provincially. Free flow of goods should be protected by mechanism established to oversee economic union.
 - Sea coast and inland fisheries should be a shared jurisdiction on similar basis as transportation.
 - Energy and natural resources should be in provincial jurisdiction, with international and military issues to be in federal jurisdiction. Territories should be given same responsibilities as provinces in energy field.
 - Responsibility for patents and copyright, subsumed under new field known as "intellectual property," should be included in federal jurisdiction.
 - Responsibility for regional economic expansion should be vested in the provinces, with continuing federal responsibility to address disparities.

- Training should be a field of provincial jurisdiction but with concurrent federal authority in order to develop national standards to preserve mobility and to meet demands of international compatibility.
- Research and development should be a concurrent responsibility.
- Regulation of the environment should be a provincial responsibility, with international and interprovincial air and waterflow standards and regulation a federal responsibility. Provinces should establish common, minimum, legally enforceable provincial standards, and an agency under supervision of the House of the Federation (restructured Senate) should monitor such standards.
- Bank of Canada:
 - Statutory obligation to pursue domestic inflation objective.
 - At least three-quarters of members to be appointed by provinces, but should not be politicians or civil servants.
 - Provincial governments should commit to mandatory independent review of fiscal policies and plans, together with the federal government, and the release of an annual report of Canadian monetary and fiscal policies.
- Federal government's spending powers should be restricted to federal jurisdiction.
- Federal government should transfer funding for income security, health care and education to provinces, and make changes to equalization payments to poorer provinces to accommodate new responsibilities.

Beaudoin-Edwards Committee Report, June 1991

- No relevant recommendations.

Spicer Commission Report, June 1991

- Federal government should place high priority in working with other governments to produce more efficiency by eliminating overlapping jurisdictions.
- Federal and provincial government must clarify the effect of various market forces in the Canadian economy and the role governments will play in the face of such economic change. These forces include the privatization of public sector enterprises, deregulation, and free trade. They seem to promise greater

economic dislocation, and threaten key values such as universal social programs.

- Government, industry, labour and small businesses must work to make Canada more competitive in the face of global market pressures.

Northumberland Group Report, June 1991

- The group insists on a strong federal government. Significant devolution of powers from the federal government to the provinces would reduce economic opportunities for all regions and reduce the country's ability to deal with key issues in the global economy.
- It is important that the federal government retain a central role in industrial development, communications and science technology.

Ontario Discussion Paper, September 1991

- The Constitution should include a Social Charter, which would serve as a guide to governments as they develop and strengthen the social contract. It would include a statement of the values and principles that Canadians wish to affirm and that should guide social policy. Such national standards would help harmonize access to social services across Canada, thereby strengthening mobility rights within the economic union.

Federal Proposals, September 1991

- Section 121 of the *Constitution Act, 1867* should be amended to read:
 - (1) Canada is an economic union within which persons, goods, services and capital may move freely without barriers or restrictions based on provincial or territorial boundaries.
 - (2) Neither the Parliament or Government of Canada nor the legislatures or the governments of the provinces shall by law or practice contravene the principle expressed in subsection (1).
 - (3) Subsection (2) does not render invalid (a) a law of the Parliament of Canada enacted to further the principles of equalization or regional development; (b) a law of a provincial legislature enacted in relation to the reduction of economic disparities between regions wholly within a province that does not create barriers or restrictions that are more onerous in relation to persons, goods, services or capital from outside the province than in relation to those from a region within the

province; or (c) a law of Parliament or the legislature of any province that has been declared by Parliament to be in the national interest.

- (4) A declaration referred to in paragraph (3)(c) shall have no effect unless it is approved by the governments of at least two-thirds of the provinces representing 50% of the population.
- This section shall come into force July 1, 1995.
- The following section should be added to the *Constitution Act, 1867* immediately after s. 91:
 - 91A. (1) Without altering any other authority of the Parliament of Canada to make laws, the Parliament of Canada may exclusively make laws in relation to any matter that it declares to be for the efficient functioning of the economic union.
 - (2) An Act of the Parliament of Canada made under this section shall have no effect unless it is approved by the governments of at least two-thirds of the provinces that represent 50% of the population.
 - (3) The legislative assembly of any province that is not among the provinces that have approved an Act of Parliament under subsection (2) may expressly declare by resolution supported by 60% of its members that the Act of Parliament does not apply in the province.
 - (4) A declaration made under subsection (3) shall cease to have effect three years after it is made or on such earlier date as may be specified in the declaration.
- The Special Joint Committee of Parliament should consider whether the opting-out provision mentioned above should be renewable.
- The Government of Canada proposes to develop, with the provinces, guidelines to improve the coordination of fiscal policies and the harmonization of fiscal policies with Canada's monetary policy. Measures would include fixed budget cycles, fixed annual meetings of finance ministers and common accounting conventions. Once approved, these guidelines would be set in federal legislation under the new economic union power.
- These guidelines would require the approval of seven of the provinces representing 50% of the population, and up to three provinces could opt out.
- The following reforms of the Bank of Canada are proposed:
 - The *Bank of Canada Act* be amended to make it clear the Bank's mandate is to achieve and maintain price stability.
 - To ensure regional representation on the Board of Directors of the Bank, the federal government will solicit the views of provincial and

territorial governments and consult with them before making appointments to the Board.

- The Government also proposes to create regional consultative panels to advise the Directors of the Bank on regional economic conditions. It will solicit the views of provincial and territorial governments with respect to the membership of these panels.
- As indicated above, the appointment of the Governor of the Bank will be subject to Senate ratification.
- Section 92 of the *Constitution Act, 1867* should be amended to recognize explicitly that labour market training is an area of exclusive provincial jurisdiction.
- To provide Canadians with the best possible service at the lowest possible cost, the federal government is prepared to discuss with the provinces the rationalization of government programs by reviewing which level of government can best deliver them. As a starting point, the Government proposes to discuss the following areas with the provinces:
 - drug prosecutions; wildlife conservation and protection; transportation of dangerous goods; soil and water conservation; ferry services; small craft harbours; some aspects of financial sector regulation; some aspects of bankruptcy law; some aspects of fair trade practices; and inspection programs.
- The Government of Canada is committed to the preservation of Canada's existing research and development capacity, and to maintaining its constitutional obligations for international and native affairs.
- The Government of Canada is prepared to recognize the exclusive jurisdiction of the provinces and discuss how best to withdraw from its responsibilities in an appropriate manner, in the following areas: tourism, forestry, mining, recreation, housing, and municipal/urban affairs.
- The federal government commits itself not to introduce new Canada-wide shared-cost programs and conditional transfers in areas of exclusive provincial jurisdiction without the approval of at least seven provinces representing 50% of the population. This commitment would be entrenched in the Constitution. The constitutional amendment would also provide for reasonable compensation to non-participating provinces that establish their own programs meeting the objectives of the new Canada-wide program.
- A Council of the Federation should be entrenched in the Constitution, composed of federal, provincial and territorial governments. It would meet to decide on issues of intergovernmental coordination and collaboration. It would have the mandate to:

- vote on proposed federal legislation to enhance the functioning of the economic union under the proposed new head of power;
 - vote on guidelines for fiscal harmonization and coordination, and decide on processes to improve future collaboration in this area; and
 - make decisions on the use of federal spending power on new Canada-wide shared-cost programs and conditional transfers in areas of exclusive provincial jurisdiction.
- Decisions of the Council of the Federation would require approval of the federal government and at least seven provinces representing 50% of the population.

Prince Edward Island Report, September 1991

- No relevant recommendations.

Manitoba Task Force Report, October 1991

- The Manitoba government should work towards the elimination of interprovincial economic barriers.

Nova Scotia Working Committee, November 1991

- Constitutional change should do nothing to weaken the federal government's ability to be a leading force in the economic, social and cultural development of the country. In particular, it should be able to:
 - maintain national unity;
 - strengthen the economy;
 - set national standards;
 - achieve social equality; and
 - redistribute the prosperity of Canadians,
- More specifically, there should be no erosion of the federal government's current role in providing national economic and social programs, with national objectives and standards.
- The policy of equalization and efforts to reduce regional economic disparities should be intensified. At the very least, this means strengthening s. 36 of the *Constitution Act, 1982* to make government obligations firmer.
- Governments should promote long-term, sustainable economic growth in Nova Scotia.

New Brunswick Commission, January 1992

- The economic union of Canada should be strengthened by amending s. 121 of the Constitution so that the federal and provincial governments are obliged to ensure the free movement of goods, services, people and capital within Canada.
- The federal government should, in partnership with the provinces, exercise its responsibility to improve the national economic infrastructure that is essential to an integrated, prosperous and competitive economic union.
- The transition to a stronger economic union, via a modernized s. 121, should be accompanied by a plan for managing the social and economic adjustment costs arising from an enhanced union.
- The federal and provincial governments should commit themselves to develop proposals to harmonize their fiscal and economic policies. These proposals should provide for the effective implementation of federal-provincial agreements in these areas.
- The federal government's proposal to recognize labour market training as an area of exclusive provincial jurisdiction should be accepted. The withdrawal of the federal government from its current labour market training activities should be subject to the successful federal-provincial negotiation of the terms and conditions for that withdrawal.
- The design and management of programs such as labour force training and unemployment insurance should be harmonized wherever possible to ensure the highest possible levels of skill and employment in the labour force.
- The current federal responsibility for unemployment insurance should be preserved, except for special arrangements that might be struck between individual provinces and the federal government. These arrangements should not undermine the integrity of the unemployment insurance program throughout the country, nor diminish labour mobility within Canada.
- Provincial governments should collaborate with the federal government to establish and pursue national objectives in post-secondary education, with special attention devoted to areas that are essential to the competitiveness of the Canadian economy.
- The federal and provincial governments should jointly create an economic development regime that would foster the identification of shared priorities to be pursued through a rationalized system of program delivery.

York University Project, January 1992

- The federal proposals to strengthen the Canadian economic union are supported. However, any attempt to so strengthen the economic union should also deal with strengthening the Canadian social union.
- A new power should be created to declare matters necessary for the efficient functioning of the economic union. However, the focus of this new power should be a reformed Senate and a Federal-Provincial Commission on the Canadian Economic Union, rather than the proposed Council of the Federation.
- A Federal-Provincial Commission on the Canadian Economic Union should be created. Its members would be appointed by the federal and provincial governments and ratified by the reformed Senate. This body would
 - receive complaints from governments, citizens and corporations;
 - develop a comprehensive catalogue of potential internal trade barriers;
 - undertake quantitative assessments of the magnitude of the social costs associated with these barriers;
 - hold public hearings where policy responses might be canvassed; and
 - make recommendations to the Senate in the form of proposed directives.
- The proposed directives on the economic union, after being ratified by a two-thirds majority vote in the Senate, would be binding on both levels of government. However, individual provinces could opt out of these directives in a manner similar to the current opt-out provision in s. 33.
- Section 121 of the *Constitution Act, 1867* should be expanded to prohibit interprovincial discrimination against persons, services and capital. The issue of subsidies should be dealt with through a separate subsidies code, rather than through s. 121.
- In interpreting s. 121, the courts should be instructed to take into account the directives proposed by the Federal-Provincial Commission. Judicial enforcement of s. 121 should be delayed for three years to provide the Commission and Senate time to develop a body of directives that would inform judicial interpretation.

Three Nations Concept, February 1992

- No relevant recommendations.

Ontario Select Committee, February 1992

- Efforts to reduce trade and other economic barriers within Canada are supported in principle.
- The government of Ontario, in concert with other provinces and the federal government, should study further the details of the federal proposals regarding the economic union, seeking to clarify, negotiate and implement some of these measures through sub-constitutional means.

Beaudoin-Dobbie Committee, March 1992

- Section 121 of the *Constitution Act, 1867* should be replaced with a new section establishing Canada as an economic union. This new section would:
 - not permit government prohibitions or restrictions on the movement of goods, services, persons and capital if such measures impeded the efficient functioning of the economic union, or constituted arbitrary discrimination or disguised restrictions on trade across provincial or territorial boundaries;
 - contain exceptions to the above, to respond to concerns about provincial monopolies, generally available subsidies and tax-based schemes to encourage investment; and
 - require governments to seek agreement on equivalent national standards to enhance the mobility and well-being of Canadians.
- A mechanism to resolve disputes arising from this new section should be chosen and set up. The mechanism should comprise three steps:
 - a review mechanism to determine whether a complaint presents a *prima facie* case;
 - a conciliation mechanism to attempt to reach a negotiated settlement; and
 - a trade tribunal to make a final, binding decision, should conciliation fail.
- The *Constitution Act, 1982* should be amended by adding a new s. 36.2, which would commit governments to:
 - work cooperatively to strengthen the economic union;
 - ensure the mobility of persons, goods, services and capital;

- pursue the goal of full employment; and
- ensure all Canadians have a reasonable standard of living.
- The mandate of the Bank of Canada should not be part of the constitutional discussion. However, the federal government should proceed with its proposal to consult provincial and territorial governments regarding appointments to the Bank's board of directors and the establishment of regional consultative panels.
- An annual conference of First Ministers dealing primarily with economic and social matters, but also with any other issues the First Ministers wish to discuss, should be entrenched in the Constitution.
- The *Constitution Act, 1867* should be amended to provide that any province may affirm by law its exclusive legislative jurisdiction over labour market training.
 - The federal government should negotiate an agreement with every province exercising this option to clarify the responsibilities of each government, and jointly set limits on federal spending in this field in the province. Program standards would be agreed upon mutually and set out in agreements. Such intergovernmental agreements could be constitutionally protected.
 - Financial compensation should be subject to a general condition that funds be actually spent on training.
 - The share of federal funds allocated to a province that has signed such an agreement should reflect the spirit of s. 36. This means it should be based on relative need and not some measure of the province's weight in the Canadian economy.

Alberta Select Special Committee, March 1992

- As a priority item, the following measures to foster greater intergovernmental cooperation in managing the economy are supported:
 - Annual First Ministers' Conferences on the economy should be entrenched in the Constitution, to take place in the pre-budget phase of the planning cycle.
 - The Constitution should confirm the legitimate role of provinces in international trade negotiations in areas directly affecting matters of exclusive provincial jurisdiction.

- As a sub-constitutional matter, all governments must cooperate to eliminate trade barriers within the country. Further development of interprovincial and federal-provincial mechanisms to eliminate these barriers is encouraged.

QUEBEC'S FUTURE IN CANADA

Existing Constitution

- The *Quebec Act* of 1774 permitted Quebec to retain its religion and civil code, thus beginning its history of distinct treatment within British North America.
- The *Constitution Act, 1867* included the following sections providing for some degree of distinctness for Quebec:
 - S. 23 (6) states unique property or residency requirements for Senators from Quebec.
 - S. 93 (2) provides for the protection of the educational rights of denominational minorities, with particular but not exclusive application in Quebec.
 - S. 129 provides for the continuation of Quebec's civil code.
 - S. 133 provides that either English or French may be used in Parliament and the Quebec legislature, and in any federal or Quebec court. Official records in Parliament and the Quebec legislature, and all legislation from either level of government would be in both languages.
- Section 23 of the *Canadian Charter of Rights and Freedoms* (1982) guarantees the rights of Canadian parents whose first language (learned and understood) is that of the English or French minority of the province they live in to have their children receive their primary and secondary education in that language. However, s. 59 (2) establishes this guarantee will only apply in Quebec once it is authorized by the Quebec legislature or government. No other province is afforded similar powers in respect to minority language education. Neither the Quebec National Assembly or the government has yet authorized the application of this guarantee.
- Section 33 of the Charter permits Parliament or any provincial legislature to override Charter application to any given law by declaring the "notwithstanding" clause. This declaration would have to be re-enacted every five years. This applies equally to all provinces, but has been popularly associated with Quebec after the National Assembly used the notwithstanding clause with respect to its sign law, Bill 178.

- There are a number of sub-constitutional ways in which Quebec is treated or acts differently than other provinces:
 - by federal statute Quebec is guaranteed three members of the Supreme Court of Canada;
 - Quebec is the only province which controls its own contributory retirement pension plan (all other citizens are covered by the Canada Pension Plan, although any province could adopt a plan similar to Quebec's);
 - Quebec is the only province which collects its own individual income tax.
- The federal government makes "equalization payments" to the poorer provinces (Newfoundland, Prince Edward Island, Nova Scotia, New Brunswick, Quebec, Manitoba and Saskatchewan) to "ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation." The federal government's commitment to this principle is now stated in s. 36 of the *Constitution Act, 1982*.

Meech Lake Constitutional Accord, 1987

- The Constitution would be interpreted in a manner consistent with recognition that:
 - French-speaking Canadians, centred in Quebec but also present elsewhere, and English-speaking Canadians, largely outside Quebec but also inside Quebec, are fundamental characteristics of Canada.
 - Quebec constitutes within Canada a distinct society.
- The duality/distinct society amendment would not affect ss. 25 or 27 of the Charter. These sections provide that the Charter shall not infringe on Aboriginal, treaty or other rights or freedoms enjoyed by Aboriginal freedoms, and that the Charter shall be interpreted in manner consistent with the preservation and enhancement of Canada's multicultural heritage.
- Role of Quebec government and legislature as to preserving and promoting Quebec's distinct identity would be affirmed.
- The federal government commits to negotiate agreement on immigration with any province that so wishes. Although such negotiation would be open to any province, Quebec was the province seeking such agreement at the time. It also committed to entrench such agreements in the Constitution, which would mean they would have to adhere to the Charter of Rights and federal laws

setting out national standards on immigration. This commitment to negotiate an agreement on immigration with Quebec was included in the political accord of the Meech Lake Accord.

- Constitution would entrench Supreme Court of Canada, and state that at least three judges of the Supreme Court shall be qualified persons from Quebec. (This would entrench what already exists by federal statute.)

1990 Constitutional Agreement, June 1990 (Companion Agreement)

- Section 28 of Charter of Rights added to s. 16 of the *Meech Lake Constitutional Accord* (1987) to ensure that the "duality/distinct society" clause does not infringe on sexual equality rights.

Allaire Commission Report (Québec Liberal Party), January 1991

- Canadian federalism should be reformed to give Quebec more political autonomy and to strengthen the Canadian economic union. The Canadian political structure should be reorganized.
- Quebec to exercise full sovereignty in areas already defined as exclusively in its sphere of authority:
 - Social affairs, municipal affairs, culture, education, housing, recreation and sports, family policy, manpower and formation, natural resources, health, and tourism.
- Quebec will assume responsibility in residual areas, and in areas of shared or federal jurisdiction:
 - agriculture, unemployment insurance, communications, regional development, energy, environment, industry and commerce, language, research and development, public security, income security.
- The federal government will exercise exclusive authority in:
 - defence and territorial security; customs and tariffs, currency and common debt, and equalization.
- Quebec and Ottawa will share powers in:
 - native affairs, taxation and revenue, immigration, financial institutions, justice, fisheries, foreign policy, post office and telecommunications, and transport.

- Federal government's spending powers will be eliminated in Quebec's areas of exclusive jurisdiction.
- Other provincial (or new regional) governments could assume similar powers as Quebec, or delegate some powers back to the federal government.
- Quebec government should hold a referendum by the fall of 1992, either on:
 - The ratification of the Allaire proposal, if agreed to by the Government of Canada; or
 - If agreement is not reached on this reform proposal by Quebec, the proposition that Quebec assume the status of a sovereign state; and that Quebec offer to arrange an economic union with the rest of Canada, managed by institutions of a confederal nature.

Bélanger-Campeau Commission Report, March 1991

- With 1982 constitution passed without Quebec and Meech Lake Accord rejected, status quo is a stalemate. The rest of Canada seems unwilling to recognize Quebec's distinctness by granting it unique political powers. In practice, the current federal regime tends to seek uniformity and deny differences, trends which are unacceptable to Quebecers. Reconciling Quebec's needs within confederation would require a major rethinking of Canada by all Canadians. Any new proposal to address Quebec's needs must come from the rest of Canada.
- Quebec should hold a referendum on sovereignty, either between June 8-22, 1992, or between October 12-26, 1992. If the result is positive, Quebec will become sovereign state exactly a year later.
- A special parliamentary commission of the National Assembly should be set up to study all matters related to Quebec sovereignty, and to consider and make recommendations to the National Assembly on any formal proposal of economic partnership from the Government of Canada.
- A second parliamentary commission of the National Assembly should be set up to assess any new constitutional proposal from the Government of Canada, and make recommendations to the National Assembly. This commission would only consider an offer formally binding the Government of Canada and the provinces.

Report of the Group of 22, June 1991

- Culture:

- Provinces should have primary responsibility.
- Federal government should retain role with respect to institutions with national and international dimension, as well as promoting Canada's image abroad.
- Responsibility for immigration should remain as it is.

Beaudoin-Edwards Committee Report, June 1991

- In proposed amending formula, Quebec would have a veto over certain constitutional amendments, as would Ontario and two regional blocks representing Atlantic Canada and the Western Provinces.
- Constitution should be amended to provide that at least three judges of Supreme Court of Canada come from Quebec. The other six judges would be appointed from other provinces and territories.

Spicer Commission Report, June 1991

- Affirms that special arrangements in the division of powers to accommodate special needs is fundamental to Canadian federalism, and that Quebec's special needs can be accommodated within federal structure.
- Affirms that Canadians will support such arrangements, allowing Quebec to be a distinct society, if they are persuaded to place the emphasis on equity in the face of special needs, recognizing especially the need of French-speaking Quebecers to protect their language and culture.
- If Canadians outside Quebec can be persuaded to accept constitutional changes that would help Quebec increase protection of its language and culture, then Quebecers will be more willing to reform Bill 178, which is seen outside Quebec as discriminatory.
- Federal and provincial governments, and the private sector, should ensure that all Canadians are made aware of all the consequences of Quebec independence.

Northumberland Group Report, June 1991

- Quebec is a province unlike any other and has a special mission -- to ensure the French language and culture survive in North America. It can best fulfil this task by staying in Canada. Quebec will find the great majority of Maritimers are supportive of its aspirations.

Ontario Discussion Paper, September 1991

- No relevant recommendations.

Federal Proposals, September 1991

- It is proposed that the votes required for Parliament or a provincial legislature to invoke the override provision of the Charter of Rights (s. 33) be changed to 60% from a simple majority of its members.
- A section should be included in the Charter reading as follows:
 - 25.1 (1) This Charter shall be interpreted in a manner consistent with
 - (a) the preservation and promotion of Quebec as a distinct society within Canada; and
 - (b) the preservation of the existence of French-speaking Canadians, primarily located in Quebec but also present throughout Canada, and English-speaking Canadians, primarily located outside Quebec but also present in Quebec.
 - (2) For the purposes of subsection (1), "distinct society", in relation to Quebec, includes
 - (a) A French-speaking majority; (b) a unique culture; and (c) a civil law tradition.
- A "Canada Clause" that acknowledges who we are as a people and who we aspire to be should be entrenched in the Constitution in s. 2 of the *Constitution Act, 1867*. Among the 14 characteristics and values that would be appropriate to be reflected in such a statement are:
 - Recognition of the responsibility of governments to preserve Canada's two linguistic majorities and minorities.
 - The special responsibility borne by Quebec to preserve and promote its distinct society.
- A constitutional amendment will be introduced to provide for a role for the provinces and the territories in Supreme Court appointments whereby appointments would be made by the federal government from lists of nominees submitted by provincial and territorial governments, the individual appointed being acceptable to the Queen's Privy Council of Canada. In addition, the Government of Canada would be prepared to proceed with the entrenchment in the Constitution of the Supreme Court and its composition if it were found desirable to proceed with any items requiring unanimous consent in the final package.

- The Government of Canada would be prepared to proceed with changes to the amending formula as specified in the Meech Lake Accord if
 - a consensus on this matter were to develop;
 - the accession of existing territories to provinces were to proceed on the basis of the existing amending formula; and
 - it were found desirable to proceed ultimately with any items requiring unanimous consent in the final package.
- While recognizing the federal role in setting Canadian policy and national objectives for immigration, the Government of Canada is prepared to negotiate with any province agreements appropriate to the circumstances of that province and to constitutionalize those agreements.
- The Government of Canada will negotiate with the provinces, upon their request, agreements appropriate to the particular circumstances of each province to define clearly the role of each level of government with respect to culture. Where appropriate, such agreements would be constitutionalized.
- In the area of broadcasting, the Government of Canada proposes to
 - consult with the provinces on the issuance of new broadcast licences;
 - provide provincial governments and their agents with the opportunity to evolve into full public broadcast undertakings with varied programming, subject to CRTC regulation;
 - further regionalize the CRTC and expand the role of its regional offices; and
 - allow for provincial participation in the nomination of regional commissioners of the CRTC.
- The federal government commits itself not to introduce new Canada-wide shared-cost programs and conditional transfers in areas of exclusive provincial jurisdiction without the approval of at least seven provinces representing 50% of the population. This commitment would be entrenched in the Constitution. The constitutional amendment would also provide for reasonable compensation to non-participating provinces that establish their own programs meeting the objectives of the new Canada-wide program.
- It is proposed that the Senate be reformed in several ways, including:
 - As a general rule, in order for measures to become law, approval of both the Senate and the House of Commons should be required, as at present. However,

- for matters of language and culture, the Senate would also have a special voting rule, requiring more than a simple majority.

Prince Edward Island Report, September 1991

- Quebec should be recognized as a distinct society in the Constitution and be extended the powers to protect and promote its language and culture, provided the provinces remain equal.
- The Committee is prepared to consider extending those subjects in the Constitution requiring unanimous consent in order to provide Quebec with the means to protect and promote its linguistic and cultural identity, provided the equality of all provinces is continued to be guaranteed in the Constitution.

Manitoba Task Force Report, October 1991

- The Constitution should include a Canada Clause that recognizes the fundamental characteristics of Canada, including:
 - a commitment to a united Canada and recognition of the equality of the provinces;
 - recognition of the Aboriginal peoples as constituting the original people and a fundamental characteristic of Canada;
 - the status of English and French as the official languages at the federal government level;
 - recognition of the unique place and role of the province of Quebec in Canada;
 - recognition of the contribution to Canada of our multicultural society; and
 - an affirmation that the rights and freedoms contained in the *Charter of Rights and Freedoms* apply to all Canadians.
- The Manitoba government should be open to a review of the current division of powers, including the federal spending power, and to study of the possibility of increased federal government involvement in policy fields which might benefit from national policy making and/or coordination. Depending on considerations of efficiency and effectiveness in the provision of public service, consideration might be given to reducing the overlap of powers or expanding federal-provincial concurrent powers.

Nova Scotia Working Committee, November 1991

- Quebec must become a full, willing partner in the Canadian federation, an objective which requires reaching a negotiated settlement.
- A break-up of the country is among the very worst possible outcomes of our constitutional discussions.
- Provided the price of unity is not fragmentation of the federation or a weakening of the federal government, then Nova Scotians' strong commitment to a united Canada *with* Quebec will prevail over any misgivings about a negotiated settlement.
- Of the options available, the constitutional recognition of the distinct society is the most acceptable, so long as:
 - it is defined in terms similar to the those of the federal proposals (ie., language, culture and law); and
 - the provinces remain as equal partners in Canada, recognizing that this requires some accommodation of differences.
- Greater effort should be made by the Nova Scotia government to meet the full range of needs of the Acadian population in their own language, and to meet their broader cultural, linguistic and educational needs; and there should be a constitutional obligation on all governments to preserve and promote Canada's linguistic duality.
- Any decentralization of powers that would reduce the ability of the federal government to meet the needs of all provinces is clearly not acceptable. Meeting Quebec's distinct needs must not be a pretext for granting to all provinces powers to which they have no reasonable claim.

New Brunswick Commission, January 1992

- Quebec should be recognized as a distinct society within Canada in the manner described in the federal government's proposals.
- Flexible and functional arrangements including, where necessary, the reallocation of powers and responsibilities should be pursued to meet the needs of Quebec and the other diverse communities of Canada.
- A recognition of the special responsibility of Quebec to preserve and promote its distinctiveness should be recognized as a fundamental characteristic of Canada in the Canada Clause.

- The existence of the English and French linguistic communities throughout the country should be recognized as a fundamental characteristic of Canada in the Canada Clause.
- The Charter of Rights and Freedoms should affirm the responsibility of Parliament and the government of Canada to *preserve and promote* the English and French linguistic communities throughout the country; and the responsibility of provincial legislatures and governments to *preserve* the same linguistic communities.
- The federal spending power for new national shared-cost programs should be exercised only with the agreement of seven provinces representing 50% of the population, and those provinces wishing to opt out of such a program would receive reasonable compensation if they establish programs with compatible objectives.
- A reformed Senate should follow a double majority rule for all measures dealing with language or culture.

York University Project, January 1992

- Recognition in the Constitution of Quebec's distinctiveness along the lines set out in the Meech Lake Accord and in the proposed section 25.1, including recognition of Canada's linguistic duality, is supported.
- The proposed recognition in a Canada Clause of Quebec's special responsibility to preserve and promote its distinct society is supported.
- The proposal to negotiate bilateral immigration agreements between the federal government and the province, and to entrench those agreements in the Constitution, is supported. However, such agreements should maintain federal responsibility for providing citizenship and citizenship services, and for establishing total numbers, national standards and objectives related to immigration.
- The principle of negotiating cultural agreements that reflect the special needs and responsibilities of Quebec, and other provinces, is supported. But any such agreements should not prevent the federal government from creating new cultural institutions which would allow for the expression and dissemination of Canada identity. Further, these agreements should not infringe on rights protected by the Charter of Rights.
- Any province should be able to receive reasonable compensation if it undertakes a program or initiative that is compatible with the objectives of a new national shared-cost program. However, the proposed requirements that the federal government obtain consent of seven provinces before introducing

new shared-cost programs, and define the objectives of such programs jointly with the provinces, is opposed.

Three Nations Concept, February 1992

- Quebec should receive recognition in the Constitution of its distinct society; special powers crucial to the promotion of its culture, society and economy; and a veto over constitutional change.
- Quebec must agree that it cannot pursue its goals without regard to the fundamental interests of the English-Canadian community. A devolution of powers that seriously weakens the ability of the federal government to perform as the national government of all Canadians will not be acceptable.

Ontario Select Committee, February 1992

- The distinct society clause as proposed by the federal government (the new section 25.1) should be considered a good basis for further discussion.
- In order to recognize and affirm Quebec's distinct identity and special role within Canada,
 - a reference to Quebec's distinctness should be included in the proposed Canada Clause; and
 - a distinct society clause should be placed within the Charter.
- Powers should be redistributed in a flexible manner to address the important objectives of affirming the equitable treatment of all provinces, accommodating Quebec's needs to preserve and promote its distinct society, and maintaining a role for a strong federal government.
- The federal government should exercise its spending power in areas of provincial jurisdiction within the following framework:
 - The federal government should not introduce new Canada-wide shared-cost programs and conditional transfers in areas of exclusive provincial jurisdiction without the approval of at least seven provinces representing 50% of the population. The same restrictions should apply to the introduction of changes to existing shared-cost programs.
 - If a province chooses not to participate but establishes its own program which meets the objectives of the new program or the changes to a program, then it should receive reasonable compensation.

- The amending formulas contained in sections 38, 41, and 42 of the *Constitution Act, 1982* (the "7/50" and unanimity formulas) should be replaced by a requirement that constitutional amendments must receive the approval of Parliament and each of four regions of Canada, defined as follows:
 - at least two of: New Brunswick, Newfoundland, Nova Scotia, and Prince Edward Island;
 - Ontario;
 - Quebec; and
 - at least two of: Alberta, British Columbia, Manitoba, and Saskatchewan, representing at least 50% of the population of this region.
- The statutory requirement of three judges from Quebec on the Supreme Court of Canada should be entrenched in the Constitution.

Beaudoin-Dobbie Committee, March 1992

- The proposed Canada Clause should include, as a fundamental value of Canada, the special responsibility of Quebec to preserve and promote its distinct society.
- The *Charter of Rights* should be amended to include the following section:

25.1 (1) This Charter shall be interpreted in a manner consistent with

(a) the preservation and promotion of Quebec as a distinct society within Canada; and

(b) the vitality and development of the language and culture of French-speaking and English-speaking minorities throughout Canada.

(2) For the purposes of subsection (1), "distinct society", in relation to Quebec, includes: (a) a French-speaking majority; (b) a unique culture; and (c) a civil law tradition.
- Under proposals for a reformed Senate, measures affecting the language or culture of French-speaking communities should require approval of a majority of Senators voting and of francophone Senators voting. The Speaker of the Senate should certify bills as affecting the language or culture of French-speaking communities; there should be no appeal to the courts of the Speaker's decisions.

- The existence of the Supreme Court and its current composition, including three judges from Quebec trained in civil law, should be entrenched in the Constitution.
- The legislative jurisdiction of Quebec over cultural affairs should be explicitly affirmed in the Constitution, at Quebec's request.
- The federal government should negotiate an agreement with the Quebec government to establish cooperative arrangements within cultural fields. Such an agreement should set out the respective roles of each government in funding activities and identify those funds to be transferred to Quebec. Any continued use of the federal spending power would have to be approved by the province, excepting spending to maintain programs clearly identified as related to national objectives.
- The federal and Quebec governments should enter an agreement to improve Quebec's participation in federal regulation of broadcasting.
- *The Liberal Party members recommend a federal presence be maintained in cultural matters through creation of a new head of power entitled "Cultural Matters." It would provide for a concurrent jurisdiction with provincial paramountcy, subject to federal power over national cultural organizations and to make payments directly to individuals and organizations. Further, Liberal members recommend the federal government not make capital expenditures in the cultural area without the approval of the province affected, unless it is willing to pay operation and maintenance costs. With respect to broadcasting, Liberal members reaffirm that there is exclusive federal jurisdiction, and no intergovernmental agreement should bind the CRTC.*
- The federal proposal to negotiate immigration agreements with the provinces, and provide stability for such agreements is supported. More specifically, these agreements should be constitutionally protected from unilateral amendment.
- The federal and provincial governments should work together towards establishing procedures for changing the terms and conditions of existing shared-cost programs. One approach to consider would be to fix a program's terms and conditions for a term of four to five years.
- The *Constitution Act, 1867* should be amended by adding a section stating that the federal government shall provide reasonable compensation to any province that decides not to participate in a new Canada-wide shared-cost program in an area of exclusive provincial jurisdiction, if the province carries on a program or initiative that meets the objectives of the Canada-wide program. Any such new Canada-wide shared-cost program should be constitutionally protected from unilateral changes.

- Finding an amending formula that meets the needs of Quebec should be a matter of the highest priority during this round of constitutional negotiations.

Alberta Select Special Committee, March 1992

- Any constitutional recognition of Quebec's distinct society in this round of constitutional negotiations must not confer additional rights, legislative powers or special privileges on the province or people of Quebec that are not available to other Canadians and their governments.
- The above recognition should be placed within the *Charter of Rights* and be limited to matters of language, culture and civil law.
- A reference to Quebec's distinctiveness should be included in the preamble to the Constitution in this round.
- In a reformed Senate, recommended as a priority item, all changes affecting the French and English languages in Canada should be subject to a double majority veto, requiring a majority of all Senators and a majority of all French-speaking Senators or all English-speaking Senators, depending on the issue.
- Any proposed change to the amending formula that does not respect the principle of provincial equality is opposed.

DIVISION OF POWERS

Existing Constitution

Selected sections: *Constitution Act, 1867*, ss. 91-95; *Constitution Act, 1982*, s. 36

- The *Constitution Act, 1867* sets out areas of exclusive provincial jurisdiction and exclusive federal jurisdiction, with matters not falling within either going to Parliament. It provides for some areas of concurrence or shared jurisdiction with Parliament having paramountcy in the event of clear conflict.
- Areas of authority cannot be directly transferred between the federal and provincial governments.
- Provincial governments have the power to regulate municipalities and the federal government has the power to regulate the two territories.

- Federal-provincial agreements enable governments to coordinate programs which involve areas within the authority of both levels of government, such as shared-cost programs and immigration.
- The federal government makes "equalization payments" to the poorer provinces (Newfoundland, Prince Edward Island, Nova Scotia, New Brunswick, Quebec, Manitoba and Saskatchewan) to "ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation." The federal government's commitment to this principle is stated in s. 36 of the *Constitution Act, 1982*. S. 36 also commits Parliament and the provincial legislatures to promote equal opportunities, further economic development to reduce disparity in the provinces, and to provide essential public services of reasonable quality.

Meech Lake Constitutional Accord, 1987

- A province that chooses to opt out of national shared-cost programs established by the federal government in areas of exclusive provincial jurisdiction will receive reasonable compensation from Ottawa, providing it carries on its own program or initiative that is compatible with national objectives.
- The federal government commits to negotiate an agreement on immigration with any province that so wishes. Although such negotiation would be open to any province, Quebec was the province seeking such agreement at the time. Ottawa also committed to entrench such agreements in the Constitution, which would mean they would have to adhere to the Charter of Rights and federal laws setting out national standards on immigration. This commitment to negotiate an agreement on immigration with Quebec was included in the political accord of the Meech Lake Accord.
- First Ministers' conferences shall be held annually, with roles and responsibilities in relation to fisheries as one item on the agenda.
- Unanimous agreement of Parliament and provincial legislatures required for creation of new provinces and extension of provincial boundaries into existing territories.

1990 Constitutional Agreement, June 1990 (Companion Agreement)

- The territories would participate at annual constitutional and economic conferences of First Ministers in discussions on agenda items that in the view of the Prime Minister may affect them.
- Future constitutional conferences should address available options for provincehood, including that only a resolution of Parliament would be required to admit the Yukon and Northwest Territories as provinces.

Allaire Commission Report (Québec Liberal Party), January 1991

- Quebec should exercise full sovereignty in areas already defined as exclusively in its sphere of authority:
 - Social affairs, municipal affairs, culture, education, housing, recreation and sports, family policy, manpower and formation, natural resources, health, and tourism.
- Quebec should assume responsibility in residual areas, and in these areas of shared or federal jurisdiction:
 - agriculture, unemployment insurance, communications, regional development, energy, environment, industry and commerce, language, research and development, public security, income security.
- The federal government should exercise exclusive authority in:
 - defence and territorial security, customs and tariffs, currency and common debt, and equalization.
- Quebec and Ottawa should share powers in:
 - native affairs, taxation and revenue, immigration, financial institutions, justice, fisheries, foreign policy, post office and telecommunications, and transport.
- Federal government's spending powers should be eliminated in Quebec's areas of exclusive jurisdiction.
- Other provincial (or new regional) governments could assume similar powers as Quebec, or delegate some powers back to the federal government.

Bélanger-Campeau Commission Report, March 1991

- With 1982 constitution passed without Quebec's consent and Meech Lake Accord rejected, status quo is a stalemate. The rest of Canada seems unwilling to recognize Quebec's distinctiveness by granting it unique political powers. In practice, the current federal regime tends to seek uniformity and deny differences, trends which are unacceptable to Quebecers. Reconciling Quebec's needs within confederation would require a major rethinking of Canada by all Canadians. Any new proposal to address Quebec's needs must come from the rest of Canada.
- No relevant recommendations.

Report of the Group of 22, June 1991

- Committed to the principle of allocating each governmental power to the level of government that can best serve the needs of the people; and to restricting federal and provincial spending to respective fields of authority, unless by mutual agreement.
- Committed to equalization payments to protect regional equity and sharing of wealth among the regions.
- Federal government should vacate some areas of social program fields (indicated below).
- National dimension (including standards) of social program fields vacated by federal government should be sustained by new arrangements that do not depend on federal government's spending powers. General resources for national social programs to be passed to provinces, and equalization arrangements redesigned to accommodate changes. No net increase in general government spending or taxation to support transfer of social programs.
- Residual powers should be removed from federal authority and re-allocated as determined through political process and courts to the provinces and federal government. Emergency power of federal government to be clarified and maintained.
- Parliament's Declaratory power should be abolished. This power currently allows federal government to declare specified fields of provincial jurisdiction "for the general advantage of Canada" and therefore in federal jurisdiction. This power has not been used in more than 30 years.
- Parliament's Reserve and Disallowance Powers should be abolished. Reserve power allows Lieutenant Governor of a province to withhold assent from a bill enacted by provincial legislature and "reserve" it for consideration by federal

government. Disallowance power permits federal government to disallow provincial statutes.

- Parliament and provincial legislatures should be restricted to spending within their own jurisdictions, unless by mutual agreement.
- Responsibility for income security (pensions, family benefits, welfare and income supplements) should be vested in provinces with appropriate fiscal resources transferred to provinces and changes in equalization for those that require it. Mobility provisions of the Constitution should be deemed to apply to income security so that no barriers are permitted to the free movement of Canadians.
- Health Care:
 - Federal government should vacate health care field and turn over all funding it now spends in this area to provinces.
 - Provincial commitment to health care should be embedded in the Constitution, as in equalization commitment.
 - Provinces should be obliged to set up interprovincial agency to:
 - establish national principles of health care;
 - provide necessary coordination and information sharing; and
 - monitor and report on Canadian health care.
 - If recommendation on reformed Senate (or House of the Federation) is adopted, activities of this interprovincial agency would be overseen or transferred to the reformed Senate.
- Education:
 - Maintained as provincial sphere, subject to general transfer of funds.
 - Provinces should agree to mutual recognition of standards to protect principle of mobility and produce harmonization.
- Culture:
 - Provinces should have primary responsibility.
 - Parliament should retain role with respect to institutions with national and international dimension, as well as promoting Canada's image abroad.

- Responsibility for immigration should remain as it is.
- Economic regulation and development:
 - Broader interpretation of federal powers in trade and commerce. Responsibility for international treaties should remain federal, but with arrangements for provincial involvement when interests at stake.
 - Regulation of competition should remain federal power.
 - Securities market should be federally regulated.
 - Mutual recognition by all provinces of financial regulations to ensure free flow of capital.
 - Interprovincial and international transportation should be regulated federally, and intraprovincial transportation be regulated provincially. Free flow of goods should be protected by mechanism established to oversee economic union.
 - Sea coast and inland fisheries should be shared jurisdiction on similar basis as transportation.
 - Energy and natural resources should be in provincial jurisdiction, with international and military issues to be in federal jurisdiction.
 - Responsibility for patents and copyright, subsumed under new field known as "intellectual property," should be included in federal jurisdiction.
 - Responsibility for regional economic expansion should be vested in the provinces, with continuing federal responsibility to address disparities.
 - Training to be a field of provincial jurisdiction, but with provision for concurrent authority in order to establish national standards to preserve mobility; and to meet demands of international competitiveness.
 - Research and development should be a concurrent responsibility.
- Regulation of the environment should be a provincial responsibility, except that international and interprovincial air and waterflow standards and regulation should be a federal responsibility.
- Territories:
 - Ottawa continue to devolve responsibility to the territories.

- The territorial governments participate fully in federal-provincial meetings when their interests are involved.
- The territories should be able become provinces, when they are ready.

Beaudoin-Edwards Committee Report, June 1991

- The delegation of powers between Parliament and legislatures should be provided for by constitutional amendment. The next constitutional committee should study this question in the framework of the division of powers.
- Extension of existing provinces into a territory should require consent of any province and territory affected, and Parliament.
- Creation of new provinces from the territories should only require consent of the affected territory and of Parliament.
- Territorial governments should be invited to participate in all future constitutional conferences.

Spicer Commission Report, June 1991

- Special arrangement of powers in provinces to accommodate special needs is fundamental to Canadian federalism, and Quebec's special needs can be accommodated within the federal structure.
- Federal government should place high priority in working with other governments to eliminate overlapping jurisdictions and programs, and to identify government efficiency as a major goal.
- Ottawa must ensure that Canada's fundamental social values and essential national institutions are protected in revising processes and structures as necessary to achieve efficiency.

Northumberland Group Report, June 1991

- The group insists on a strong federal government. Significant devolution of powers from the federal government to the provinces would reduce economic opportunities for all regions and reduce the country's ability to deal with key issues in the global economy.
- It is important that the federal government retain a central role in industrial development, communications and science technology.

- Redistribution of powers between the two levels of government should be decided according to the level best able to handle the particular issues. Canada needs to disentangle the various levels of government from one another and to review government programs to eliminate duplication and programs that work at cross purposes, particularly in regional development.

Ontario Discussion Paper, September 1991

- Options for implementing and enforcing the Social Charter include:
 - entrench federal-provincial agreements on financing and implementing programs that arise from Social Charter principles so that they cannot be changed unilaterally without financial penalty.
 - leave the details of institutional arrangement to federal-provincial negotiation. Social Charter would only include a general clause requiring governments to implement principles included in the Charter.

Federal Proposals, September 1991

- Section 121 of the *Constitution Act, 1867* should be amended to read as follows:
 - (1) Canada is an economic union within which persons, goods, services and capital may move freely without barriers or restrictions based on provincial or territorial boundaries.
 - (2) Neither the Parliament or Government of Canada nor the legislatures or the governments of the provinces shall by law or practice contravene the principle expressed in subsection (1).
 - (3) Subsection (2) does not render invalid (a) a law of the Parliament of Canada enacted to further the principles of equalization or regional development; (b) a law of a provincial legislature enacted in relation to the reduction of economic disparities between regions wholly within a province that does not create barriers or restrictions that are more onerous in relation to persons, goods, services or capital from outside the province than those from a region within the province; or (c) a law of Parliament or the legislature of any province that has been declared by Parliament to be in the national interest.
 - (4) A declaration referred to in paragraph (3)(c) shall have no effect unless it is approved by the governments of at least two-thirds of the provinces representing 50% of the population.
 - This section shall come into force July 1, 1995.

- The following section should be added to the *Constitution Act, 1867* immediately after s. 91:
 - 91A. (1) Without altering any other authority of the Parliament of Canada to make laws, the Parliament of Canada may exclusively make laws in relation to any matter that it declares to be for the efficient functioning of the economic union.
(2) An Act of the Parliament of Canada made under this section shall have no effect unless it is approved by the governments of at least two-thirds of the provinces representing 50% of the population.
(3) The legislative assembly of any province that is not among the provinces that have approved an Act of Parliament under subsection (2) may expressly declare by resolution supported by 60% of its members that the Act of Parliament does not apply in the province.
(4) A declaration made under subsection (3) shall cease to have effect three years after it is made or on such earlier date as may be specified in the declaration.
- The Special Joint Committee of Parliament should consider whether the opting-out provision mentioned above should be renewable.
- The Government of Canada proposes to develop, with the provinces, guidelines to improve the coordination of fiscal policies and the harmonization of fiscal policies with Canada's monetary policy. Once approved, these guidelines would be set in federal legislation under the new economic union power.
- These guidelines would require the approval of seven of the provinces representing 50% of the population, and up to three provinces could opt out.
- Section 92 of the *Constitution Act, 1867* should be amended to recognize explicitly that labour market training is an area of exclusive provincial jurisdiction.
- While recognizing the federal role in setting Canadian policy and national objectives for immigration, the Government of Canada is prepared to negotiate with any province agreements appropriate to the circumstances of that province and to constitutionalize those agreements.
- The Government of Canada will negotiate with the provinces, upon their request, agreements appropriate to the particular circumstances of each province to define clearly the role of each level of government in the field of culture. Where appropriate, such agreements would be constitutionalized.
- In the area of broadcasting, the Government of Canada proposes to
 - consult with the provinces on the issuance of new broadcast licences;

- provide provincial governments and their agents with the opportunity to evolve into full public broadcast undertakings with varied programming, subject to CRTC regulation;
 - further regionalize the CRTC and expand the role of its regional offices; and
 - allow for provincial participation in the nomination of regional commissioners of the CRTC.
- Reserving for itself the Peace, Order and Good Government Clause of the *Constitution Act, 1867* to deal with national emergencies, the Government of Canada is prepared to transfer to the provinces authority for non-national matters not specifically assigned to the federal government under the Constitution or through court decisions.
 - The Government of Canada is prepared to support a constitutional amendment to remove the declaratory power set out in s. 92 (10) of the *Constitution Act, 1867*.
 - The Government of Canada is committed to the preservation of Canada's existing research and development capacity and to maintaining constitutional obligations for international and native affairs.
 - The Government of Canada is prepared to recognize the exclusive jurisdiction of the provinces and discuss how best to withdraw from its responsibilities in an appropriate manner, in the following areas: tourism, forestry, mining, recreation, housing, and municipal/urban affairs.
 - The Government of Canada would support a constitutional amendment providing for delegation of powers between Parliament and the legislatures, and that there be provisions in the Constitution that such delegation of legislative authority be with the mutual consent of the legislative bodies involved.
 - To provide Canadians with the best possible service at the lowest possible cost, the federal government is prepared to discuss with the provinces the rationalization of government programs by reviewing which level of government can best deliver them. As a starting point, the Government proposes to discuss the following areas with the provinces:
 - drug prosecutions; wildlife conservation and protection; transportation of dangerous goods; soil and water conservation; ferry services; small craft harbours; some aspects of financial sector regulation; some aspects of bankruptcy law; some aspects of fair trade practices; inspection programs.
 - The federal government commits itself not to introduce new Canada-wide shared-cost programs and conditional transfers in areas of exclusive provincial jurisdiction without the approval of at least seven provinces representing 50% of the population. This commitment would be entrenched in the Constitution. The

constitutional amendment would also provide for reasonable compensation to non-participating provinces that establish their own programs meeting the objectives of the new Canada-wide program.

- A Council of the Federation should be entrenched in the Constitution, composed of federal, provincial and territorial governments (with the territories as non-voting members). It would meet to decide on issues of intergovernmental coordination and collaboration. It would have the mandate to
 - vote on proposed federal legislation to enhance the functioning of the economic union under the proposed new head of power.
 - vote on guidelines for fiscal harmonization and coordination, and decide on processes to improve future collaboration in this area.
 - make decisions on the use of federal spending power on new Canada-wide shared-cost programs and conditional transfers in areas of exclusive provincial jurisdiction.
- Decisions of the Council of the Federation would require approval of the federal government and at least seven provinces representing 50% of the population.

Prince Edward Island Report, September 1991

- Any devolution of powers from the federal government to the provinces must be accompanied by a concomitant transfer of fiscal resources. As well, national standards must be maintained.
- The present round of constitutional reform should entrench guarantees of national standards and fiscal equality, and, more specifically, the principle of equalization.

Manitoba Task Force Report, October 1991

- The Task Force supports the maintenance of a strong central government. It is essential for the equitable functioning of the Canadian federal union that the central government has the capacity to respond to the needs of the less advantaged citizens and regions of the nation.
- The constitutional provisions regarding equalization should be strengthened by including guidelines to establish a process for changing the formula.
- The federal government's obligation to fund the Established Program Financing program should be entrenched in the Constitution.
- The Manitoba government should be open to a review of the current division of powers, including the federal spending power, and to study of the possibility of

increased federal government involvement in policy fields which might benefit from national policy making and/or coordination. Depending on considerations of efficiency and effectiveness in the provision of public service, consideration might be given to reducing the overlap of powers or expanding federal-provincial concurrent powers.

Nova Scotia Working Committee, November 1991

- Any decentralization of powers that would reduce the ability of the federal government to meet the needs of all provinces is clearly not acceptable.
- Constitutional change should do nothing to weaken the federal government's ability to be a leading force in the economic, social and cultural development of the country. In particular, it should be able to:
 - maintain national unity;
 - strengthen the economy;
 - set national standards;
 - achieve social equality; and
 - redistribute the prosperity of Canadians,
- More specifically, there should be no erosion of the federal government's current role in providing national economic and social programs, with national objectives and standards.
- No constitutional change is acceptable which endangers the preservation, protection and promotion of our social programs across the country.
- The diversity and flexibility that federalism makes possible is understood and supported. The Nova Scotia government should be fully active in its areas of constitutional responsibility, and it should have the resources to promote vigorously the interests of Nova Scotians.
- The policy of equalization and efforts to reduce regional economic disparities should be intensified. At the very least, this means strengthening s. 36 of the *Constitution Act, 1982* to make government obligations firmer.

New Brunswick Commission, January 1992

- Flexible and functional arrangements including, where necessary, the reallocation of powers and responsibilities should be pursued to meet the needs of Quebec and the other diverse communities of Canada.
- Section 36 of the *Constitution Act, 1982* should be extended to identify more clearly the social goals that governments are committed to, at least in the areas of health, education and social security.

- The federal spending power for new national shared-cost programs should be exercised only with the agreement of seven provinces with 50% of the population, and those provinces wishing to opt out of such a program would receive reasonable compensation if they establish programs with compatible objectives.
- The federal government should, in partnership with the provinces, exercise its responsibility to improve the national economic infrastructure that is essential to an integrated, prosperous and competitive economic union.
- The transition to a stronger economic union, via a modernized s. 121, should be accompanied by a plan for managing the social and economic adjustment costs arising from an enhanced union.
- The federal government's proposal to recognize labour market training as an area of exclusive provincial jurisdiction should be accepted. The withdrawal of the federal government from its current labour market training activities should be subject to the successful federal-provincial negotiation of the terms and conditions for that withdrawal.
- The design and management of programs such as labour force training and unemployment insurance should be harmonized wherever possible to ensure the highest possible levels of skill and employment in the labour force.
- The current federal responsibility for unemployment insurance should be preserved, except for special arrangements that might be struck between individual provinces and the federal government. These arrangements should not undermine the integrity of the unemployment insurance program throughout the country, nor diminish labour mobility within Canada.
- Provincial governments should collaborate with the federal government to establish and pursue national objectives in post-secondary education, with special attention devoted to areas that are essential to the competitiveness of the Canadian economy.
- The federal and provincial governments should jointly create an economic development regime that would foster the identification of shared priorities to be pursued through a rationalized system of program delivery.

Ontario Social Charter, February 1992

- The social charter should be entrenched in s. 36 of the *Constitution Act, 1982* and should speak in terms of commitments of governments to meet social policy objectives.
- Building on the limited expression of social principles already included in s. 36, the following principles should be added to the s. 36(1) as items (d) to (h), to

which the government of Canada and the provincial governments would be committed:

- providing throughout Canada a health care program that is comprehensive, universal, portable, publicly administered and accessible;
 - providing social services and welfare based on need, so as to ensure that all Canadians have access to a minimum level of housing, food and other basic necessities;
 - providing high quality public primary and secondary education to all persons resident in Canada;
 - protecting, preserving and improving the quality of the environment within a sustainable economy; and
 - generally promoting the quality and standard of life of Canadians.
- The social charter should include a clause to ensure it operates in harmony with the *Charter of Rights*.
 - Agreements by governments in the areas covered by the social charter should be constitutionally binding.
 - To ensure governments are held accountable for decisions they take or fail to take in relation to the social charter, an independent commission should be established to monitor the implementation of the charter. This commission would:
 - be appointed jointly by Canada and the provinces;
 - report annually on governments' progress in meeting social charter commitments, including intergovernmental agreements;
 - conduct public hearings on matters related to the social charter and examine questions related to the failure of governments to meet their social charter obligations;
 - make recommendations to governments in relation to their social charter commitments; and
 - establish expert panels to engage in research on specific social policy issues.
 - Intergovernmental decision-making should be made less restrictive, to allow for the development and harmonization of standards as soon as the majority of the provinces agree.

York University Project, January 1992

- The proposal to permit the delegation of legislative powers between the federal government and the provinces is supported, provided:
 - the delegation can be revoked by either party with proper notice; and
 - the delegation would be for a fixed term, after which time it automatically terminates unless renewed.
- The proposal to recognize labour-market training as an exclusive provincial field is supported, providing any amendment preserves a role for the federal government to set standards and objectives in the training field. This latter role would enhance labour mobility within Canada and assist in developing a competitive workforce.
- The proposal to negotiate bilateral immigration agreements between the federal government and the province, and to entrench those agreements in the Constitution, is supported. However, such agreements should maintain federal responsibility for providing citizenship and citizenship services, and for establishing total numbers, national standards and objectives related to immigration.
- The principle of negotiating cultural agreements that reflect the special needs and responsibilities of Quebec, and other provinces, is supported. But any such agreement should not prevent the federal government from creating new cultural institutions which would allow for the expression and dissemination of Canada identity. Further, these agreements should not infringe on rights protected by the Charter of Rights.
- In principle, the proposal to transfer to the provinces the so-called "residual power" under the peace-order-and-good-government provision is supported. However, such a clause must be carefully drafted to preserve federal responsibility over matters of national concern that may not be specifically mentioned in the division of powers.
- The federal powers of reservation and disallowance should be abolished, as is proposed.
- The federal proposal to recognize or confirm areas of exclusive provincial jurisdiction is generally supported. However, any amendment should not prohibit any concurrent federal involvement in these fields. The relationship between federal and provincial powers should be regulated by intergovernmental agreements; in certain fields, provincial laws might be declared paramount over conflicting federal laws.
- Any province should be able to receive reasonable compensation if it undertakes a program or initiative that is compatible with the objectives of a new national

shared-cost program. However, the proposed requirements that the federal government obtain consent of seven provinces before introducing new shared-cost programs, and define the objectives of such programs jointly with the provinces, is opposed.

- The creation of mechanisms and institutions, such as a Council of the Federation, to improve intergovernmental coordination is supported. But these institutions should not have law-making power, and any agreements reached through such a Council should continue to require the approval of the provincial legislatures.

Three Nations Concept, February 1992

- Quebec should receive recognition in the Constitution of its distinct society; special powers crucial to the promotion of its culture, society and economy; and a veto over constitutional change. English Canadian provinces have no need or desire for such powers.
- Quebec must agree that it cannot pursue its goals without regard to the fundamental interests of the English-Canadian community. A devolution of powers that seriously weakens the ability of the federal government to perform as the nation government of all Canadians will not be acceptable.
- The federation's capacity to promote equalization must be preserved.

Ontario Select Committee, February 1992

- A review of the existing division of powers should be undertaken with the following purposes:
 - To identify areas of overlap and duplication in the administration of powers. This part of the review should also identify gaps or areas in which there is some confusion over who has authority.
 - To identify areas of authority in which a different level of government might more effectively administer a power. Any transfer of authority in response to provincial needs must be accompanied by adequate fiscal resources.
- Powers should be redistributed in a flexible manner to address the important objectives of affirming the equitable treatment of all provinces, accommodating Quebec's needs to preserve and promote its distinct society, and maintaining a role for a strong federal government.
- Specific mechanisms to reassign powers flexibly should be studied further. These mechanisms would include legislative delegation, making more powers concurrent with provincial or federal paramountcy, including certain bilateral agreements

between governments in the Constitution, and the use of opting in or out of national shared-cost programs.

- The federal government should exercise its spending power in areas of provincial jurisdiction within the following framework:
 - The federal government should not introduce new Canada-wide shared-cost programs and conditional transfers in areas of exclusive provincial jurisdiction without the approval of at least seven provinces representing 50% of the population. The same restrictions should apply to the introduction of changes to existing shared-cost programs.
 - If a province chooses not to participate but establishes its own program which meets the objectives of the new program or the changes to a program, then it should receive reasonable compensation.
 - This provision should be entrenched in the Constitution.
- The concept of a Social Charter should be embodied in an expanded s. 36 of the *Constitution Act, 1982* in the following terms:
 - It should build on the principles found in s. 36, and uphold national standards and equitable access to programs involving but not limited to health care, education, social security and the environment;
 - Its role should be to ensure the continued maintenance and development of our tradition of national standards in social programs.
 - The principles of an expanded s. 36 could be monitored by a standing joint committee of a reformed second chamber and House of Commons. This body could review proposed legislation or agreements or changes to existing agreements. It could also conduct systematic reviews of the adherence of governments to those principles.
 - Adherence to an expanded s. 36 would primarily rely on the moral and political pressure which would result from the public scrutiny of government policies this review process would provide. However, the options for implementing and enforcing an expanded s. 36 should be further explored. The provisions of an expanded s. 36 should not be judicially enforceable.

Beaudoin-Dobbie Committee, March 1992

- Inland fisheries and personal bankruptcy should be made concurrent powers with federal paramountcy.

- The federal and provincial governments should examine ways to eliminate unnecessary overlap and duplication, and make more efficient use of public resources.
- The federal proposal to permit legislative delegation between Parliament and provincial legislatures should be adopted within a constitutional framework that will address concerns about this procedure. This framework should ensure that:
 - any delegation take place only after extensive public consultation;
 - the scope and objectives of each delegation are appropriately defined and circumscribed;
 - appropriate financial compensation accompany each delegation, reflecting the spirit of s. 36;
 - in the case of delegation to a provincial legislature, the provincial government assume the official languages obligations of the federal government;
 - each delegation be renewed every five years to guarantee continuing discussion about the need for the delegation; and
 - the delegating body (Parliament or a provincial legislature) be able to revoke or amend the delegation, with reasonable advance notice.
- The *Constitution Act, 1867* should be amended to provide a mechanism to give greater stability to intergovernmental agreements and protect them from unilateral amendment.
- The *Constitution Act, 1867* should be amended to provide that any province may affirm by law its exclusive legislative jurisdiction over labour market training.
 - The federal government should negotiate an agreement with every province exercising this option to clarify the responsibilities of each government, and jointly set limits on federal spending in this field in the province. Program standards would be agreed upon mutually and set out in agreements. Such intergovernmental agreements could be constitutionally protected.
 - Financial compensation should be subject to a general condition that funds be actually spent on training.
 - The share of federal funds allocated to a province that has signed such an agreement should reflect the spirit of s. 36. This means it should be based on relative need and not some measure of the province's weight in the Canadian economy.

- The federal government's obligations for Aboriginal affairs should be maintained and respected, and its official languages obligations should also be provided for in such agreements.
- Such agreements should not affect the federal government's ability to legislate on labour market training in areas of exclusive federal jurisdiction relating to unemployment insurance or any other head of power.
- The federal proposal that the federal and provincial governments, and the private sector, take leadership in skills standards is supported.
- The federal government should offer to negotiate bilateral agreements in tourism, forestry, mining, recreation, housing, and municipal/urban affairs with any interested province, to better define and harmonize the respective roles of each government.
 - Such agreements would explicitly recognize the province's leadership in each field, and its authority over policy and programs. The agreements should be constitutionally protected.
 - This approach might also be applied to other areas now totally within provincial jurisdiction or shared powers, especially regional development and family policy.
 - The federal spending power could be dealt with in a similar fashion in relation to energy.
 - The federal government should continue to deliver Canada-wide programs in health, education and social services.
- *Liberal Party members disagree with the above conclusions with respect to regional development, energy and health. They believe the federal role in regional development should be continued through a new head of power with provincial paramountcy. The Liberal members sought and never received an explanation as to why there is a reference to energy in this above section. They believe any restrictions on the federal spending power in energy should only be the result of negotiated agreements.*
- The federal government offer to negotiate arrangements on culture with all provinces requires further examination, including consultation with the affected artistic and cultural communities, before proceeding.
- The legislative jurisdiction of Quebec over cultural affairs should be explicitly affirmed in the Constitution, at Quebec's request. Other provinces may seek similar affirmation in the future.

- The federal proposal to negotiate immigration agreements with the provinces, and provide stability for such agreements is supported. More specifically, these agreements should be constitutionally protected from unilateral amendment.
- The federal and provincial governments should work together towards establishing procedures for changing the terms and conditions of existing shared-cost programs. One approach to consider would be to fix a program's terms and conditions for a term of four to five years.
- The *Constitution Act, 1867* should be amended by adding a section stating that the federal government shall provide reasonable compensation to any province that decides not to participate in a new Canada-wide shared-cost program in an area of exclusive provincial jurisdiction, if the province carries on a program or initiative that meets the objectives of the Canada-wide program. Any such new Canada-wide shared-cost program should be constitutionally protected from unilateral changes.
- The residual power should not be changed, so that Parliament's powers over matters of national concern and national emergencies are maintained.
- The *Constitution Act, 1982* should be amended by adding a new s. 36.1, which would commit governments to fostering the following social commitments:
 - comprehensive, universal, portable, publicly administered and accessible health care;
 - adequate social services and social benefits;
 - high quality education;
 - the right of workers to organize and bargain collectively; and
 - the integrity of the environment.
- *The Liberal members recommend the Constitution enshrine an obligation on governments to provide universal, publicly funded hospital and medical care.*
- The *Constitution Act, 1982* should be amended by adding a new s. 36.2, which would commit governments to:
 - work cooperatively to strengthen the economic union;
 - ensure the mobility of persons, goods, services and capital;
 - pursue the goal of full employment; and
 - ensure all Canadians have a reasonable standard of living.

Alberta Select Special Committee, March 1992

- Any distribution of federal and provincial responsibilities under the Constitution must respect the fundamental equality of the provinces, and allow all provinces the same opportunity to exercise any new powers.
- As a priority item, the ability of the federal government to spend in areas of exclusive provincial jurisdiction should be limited in order to prevent the distortion of the division of powers as set out in the Constitution:
 - If a province chooses not to participate in a proposed Canada-wide shared-cost program and establishes a similar program that is compatible with the objectives of the national program, that province should receive reasonable financial compensation from the federal government.
- A cooperative review of the division of constitutional responsibilities, in the next round of negotiations, by both orders of government with the objective of increasing the efficiency of government is supported. In particular, the review should study the use of:
 - legislative interdelegation;
 - concurrent jurisdiction, with either provincial or federal paramountcy, in areas such as the environment, communications and regional development; and
 - the constitutional protection of administrative arrangements between governments.
- As a sub-constitutional matter, flexible legislative and other arrangements should be used to maintain Canada's network of social security and social service programs, rather than any constitutional entrenchment. These programs are an integral part of the Canadian identity.
- Similarly, common, nation-wide standards for the delivery of education, health care and social services should be established through intergovernmental cooperation, and set out formally in interprovincial agreements.
- Adequate and stable federal-provincial funding mechanisms to provide provinces adequate resources to carry out their constitutional responsibilities in regard to social programs must be established outside the constitutional process.

NATIONAL INSTITUTIONS

Existing Constitution

Selected sections: *Constitution Act, 1867*, ss. 17, 21-24, 26-39, 44-53 and 101; ss. 3-5 of *Constitution Act, 1982*, ss. 38, 41-44, 46-47.

- The federal Cabinet (Governor General-in-Council) has exclusive right to name Senators, subject to conditions:
 - Canada is segmented into four divisions to be represented in the Senate according to the following formula: Ontario (24 Senators); Quebec (24); the Maritime provinces (24), including Nova Scotia (10), New Brunswick (10) and Prince Edward Island (4); and the western provinces (24), including Manitoba (6), British Columbia (6), Saskatchewan (6) and Alberta (6). Newfoundland is entitled to six Senators, and the Northwest Territories and the Yukon one each.
 - The Cabinet may add new Senate seats in numbers of four or eight, from the four divisions defined above.
- The Senate has the same legislative powers as the House of Commons, but cannot initiate bills involving raising of taxes or appropriating public money. The Senate has only a suspensive veto with regards to most constitutional amendments (for at most 180 days) (*Constitution Act, 1982*, s. 38, 41-44, 46-47).
- The Supreme Court of Canada is established by statute (the *Supreme Court Act*) pursuant to the power of the federal Parliament in s. 101 of the *Constitution Act, 1867* "to provide for the constitution, maintenance, and organization of a general court of appeal for Canada." Therefore, the federal Parliament has the sole power to regulate the Court.
 - The *Supreme Court Act* provides that the Court is to be comprised of nine judges, three of whom must be from Quebec. By convention the composition of the Court has followed a particular regional make-up: three judges from each of Quebec and Ontario, two from the Western provinces and one from the Atlantic provinces. Also by convention, the Chief Justiceship has usually alternated between French-speaking and English-speaking incumbents.
 - The judges of the Court are appointed by the Governor General-in-Council (the federal Cabinet), on the recommendation of the Prime Minister in the case of the Chief Justice, and on the recommendation of the federal Minister of Justice for all other judges of the Court.
- The House of Commons and the Legislatures of the provinces are elected on the basis of universal adult suffrage. Elections must be held at least every five years.

- Members of the House of Commons and the Legislatures are elected in territorially based constituencies. The winning candidate is the one who receives the most votes.

Meech Lake Constitutional Accord, 1987

- Until Senate is reformed, provinces would provide list of names for Senate vacancies from which the Federal Cabinet would choose appointments.
- Entrenches constitutional conferences at which one item on agenda would be Senate reform.
- Unanimous consent of Parliament and provincial legislatures would be required for any changes to the Senate in respect to the selection of Senators, provincial representation, Senate powers, and residence qualifications.
- Constitution would entrench Supreme Court of Canada and to state:
 - At least three judges of the Supreme Court shall be qualified persons from Quebec.
 - When a vacancy occurs, the government of each province may submit names of qualified persons to the federal Minister of Justice. The Federal Cabinet shall appoint one of those people nominated, unless an appointment is sought for the Chief Justice from among the existing Supreme Court judges.
 - If a replacement is required for one or more of the three judges from Quebec, the appointee shall also come from Quebec. Otherwise, the appointee shall be from a province other than Quebec.

1990 Constitutional Agreement, June 1990 (Companion Agreement)

- Commission with provincial, federal and territorial representation to be set up to conduct hearings and report to Parliament and other legislatures before the First Ministers' constitutional conferences on the Senate, to be held by the end of 1990, on specific proposals of Senate reform embracing the following objectives:
 - The Senate should be elected.
 - The Senate should be more representative of less populous provinces and territories.
 - The Senate should have effective powers to (a) ensure interests of less populous provinces and territories are more prominently represented in national decision-making, (b) reflect Canada's duality, and (c) strengthen

Government of Canada's capacity to govern on behalf of all Canadians, while preserving principle of its responsibility to the House of Commons.

- Senate reform should be a key constitutional priority until comprehensive reform is achieved.
- If comprehensive Senate reform not achieved by June 1995, a new formula shall take effect for Senate composition.
- Amendments shall be laid before Parliament and the provincial legislatures by the Prime Minister and respective Premiers to provide the territories with an equal role as the provinces in appointments to the Senate and the Supreme Court of Canada.

Allaire Commission Report (Québec Liberal Party), January 1991

- Abolish Senate.
- Maintain common Parliament, elected by universal suffrage.
- Set up "community tribunal" to ensure compliance with new constitution and to enforce legislation within jurisdiction of new federal government.
- Decisions of Quebec's superior courts subject only to new final court of appeal in Quebec, and not to Supreme Court of Canada.
- Reform Bank of Canada to ensure regional representation and independence.

Bélanger-Campeau Commission Report, March 1991

- No relevant recommendations.

Report of the Group of 22, June 1991

- Bank of Canada:
 - Statutory obligation to pursue domestic inflation objective.
 - At least three-quarters of members should be appointed by provinces, but should not be politicians or civil servants.
 - Provincial governments should commit, together with the federal government, to mandatory independent review of fiscal policies and plans, and to the release of an annual report of Canadian monetary and fiscal policies.

- Senate should be reformed so that:
 - Senators are elected or appointed by provinces, and the Senate accorded specific status within Constitution as the House of the Federation.
 - Its functions would include to:
 - review House of Commons laws on federal-provincial relations.
 - oversee development and enforcement of national standards in appropriate areas of provincial activity.
 - monitor interprovincial tribunals and agencies set up to implement interprovincial agreements.
 - review appointments of federal agencies of concern to provinces, such as CRTC, NEB and the Bank of Canada.

Beaudoin-Edwards Committee Report, June 1991

- Constitution should be amended to provide that at least three judges of Supreme Court of Canada come from Quebec. The other six judges would be appointed from other provinces and territories.

Spicer Commission Report, June 1991

- Abolish or fundamentally reform Senate.
- Recognizing that present political system is too partisan and adversarial, develop more productive format for Commons' Question Period.
- Recognizing that system is too subject to iron-clad party discipline, consider more free votes within House of Commons and shorter Parliamentary sessions to allow MPs more time in ridings.
- Find ways to improve consultation with people.

Northumberland Group Report, June 1991

- The group welcomes a review of the role of the Senate in order to strengthen its capacity to speak with a stronger voice on behalf of Canada's regions.

Ontario Discussion Paper, September 1991

- Options for implementing and enforcing the Social Charter might include the following:
 - Replace Senate with new institution allowing provincial governments to play a more significant role in developing national social programs.
 - Leave details of institutional arrangement to federal-provincial negotiation. Social Charter would only include a general clause requiring governments to implement principles included in the Charter.
 - Make responsibility for the Social Charter the prime function of a substantially reformed, elected Senate.

Federal Proposals, September 1991

- Commitment to a process of further parliamentary reform to give individual MPs more free votes and to reduce application of votes of confidence.
- It is proposed that the Senate be reformed in the following ways:
 - The Senate be directly elected.
 - Senate elections coincide with elections to the House of Commons.
 - The Senate's composition provide for much more equitable provincial and territorial representation than at present.
 - The House of Commons remain the primary legislative body.
 - As a general rule, in order for measures to become law, approval of both the Senate and the House of Commons should be required, as at present. However,
 - For matters of language and culture, the Senate would also have a special double majority voting rule, requiring more than a simple majority of the Senate.
 - For matters of national importance, such as national defense and international issues, the Senate would have a six-month suspensive veto. Following expiry of the suspensive veto, the House of Commons would be required to repass the legislation for it to become law.

- Since the Senate is not a confidence chamber, it would have no legislative role in relation to appropriation bills and measures to raise funds, including borrowing authorities.
- Guaranteed representation be provided for Aboriginal Canadians in the Senate.
- The Senate continue to have a mandate to conduct special inquiries into issues of public policy.
- It is proposed that the Special Joint Committee of Parliament consider the following issues:
 - The form of direct election to the Senate.
 - The appropriate number and distribution of Senate seats.
 - In consultation with the Aboriginal peoples, the appropriate representation of Canada's First Peoples.
- It is proposed that the Senate be given the mandate to ratify the appointments of the Governor of the Bank of Canada; the heads of national cultural institutions such as the Canadian Broadcasting Corporation, the National Film Board, the National Library, the National Archives, national museums, the Canadian Film Development Corporation, the Canada Council and the National Arts Centre; and the heads of regulatory boards and agencies such as the National Energy Board, the National Transportation Agency, the Canadian Radio-television and Telecommunications Commission, the Immigration and Refugee Board, and the proposed Canadian Environmental Assessment Agency.
- A constitutional amendment will be introduced to provide for a role for the provinces and the territories in Supreme Court appointments whereby appointments would be made by the federal government from lists of nominees submitted by provincial and territorial governments, the individual appointed being acceptable to the Queen's Privy Council of Canada. In addition, the Government of Canada would be prepared to proceed with the entrenchment in the Constitution of the Supreme Court and its composition if it were found desirable to proceed with any items requiring unanimous consent in the final package.
- The following reforms of the Bank of Canada are proposed:
 - The *Bank of Canada Act* be amended to make it clear the Bank's mandate is to achieve and maintain price stability.
 - To ensure regional representation on the Board of Directors of the Bank, the federal government will solicit view of provincial and territorial

governments and consult with them before making appointments to the Board.

- The Government also proposes to create regional consultative panels to advise the Directors of the Bank on regional economic conditions. It will solicit the views of provincial and territorial governments with respect to the membership of these panels.
- As indicated above, the appointment of the Governor of the Bank will be subject to Senate ratification.
- A Council of the Federation should be entrenched in the Constitution, composed of federal, provincial and territorial governments (territorial representatives would be non-voting members). It would meet to decide on issues of intergovernmental coordination and collaboration. It would have the mandate to:
 - vote on proposed federal legislation to enhance the functioning of the economic union under the proposed new head of power.
 - vote on guidelines for fiscal harmonization and coordination, and decide on processes to improve future collaboration in this area.
 - make decisions on the use of the federal spending power on new Canada-wide shared-cost programs and conditional transfers in areas of exclusive provincial jurisdiction.
- Decisions of the Council of the Federation would require approval of the federal government and at least seven provinces representing 50% of the population.

Prince Edward Island Report, September 1991

- Senate reform is essential. If it is not possible to proceed with it in the present round of constitutional reform, it should be undertaken in the next round.
- Prince Edward Island should seek more equitable representation in the Senate.
- The Committee was not able to reach a consensus on whether Senators should be elected. However, if Senators are to be elected, they should be elected according to individual Senate constituencies rather than on a province-wide basis, in order to better reflect the rural character of Prince Edward Island.
- The Senate should have more specific and focused powers. It should be given greater scope to introduce legislation (except money bills) and powers to suspend and/or amend legislation from the Commons, without having an absolute veto. It should have special responsibilities to review legislation respecting federal-provincial relations, language rights, minority rights and the rights of individual provinces.

Manitoba Task Force Report, October 1991

- The existing Senate should be dissolved and a new second Chamber created to effectively speak for provincial/territorial and regional concerns.
- The following principles should guide the creation of the new second Chamber:
 - the new second Chamber should be elected;
 - seats should be distributed equally or equitably to balance provincial and territorial representation within central Canada;
 - the Chamber should have the power to review and if necessary delay legislation for a limited period;
 - the Chamber should be given the role of reviewing significant appointments made by the federal government; and
 - the Chamber should be given the power to review federal programs that impact directly on the provinces, such as equalization and Established Program Financing legislation.
- To be sensitive to the concerns of the regions, a federal-provincial-territorial consultative process should be established for the selection of Supreme Court Justices.
- The Constitutional amending formula should be changed so that territories might attain provincial status as other provinces did: through a bilateral agreement with the federal government.

Nova Scotia Working Committee, November 1991

- Our political institutions do not make politicians sufficiently responsive to public opinion.
- The Senate should be either abolished or reformed; it is totally unacceptable in its current form.
- If there is to be a Senate,
 - its members must be elected, preferably by a method that would ensure there were equal numbers of men and women, and that would also make its membership more representative of the racial, linguistic and cultural diversity of the country;

- its principle function should be to make the voices of the regions outside central Canada heard in Ottawa, although there is no agreement that this means all provinces must be represented by equal numbers of Senators; and
- it should have just enough power represent the regions in Ottawa but not enough to obstruct the effectiveness of responsible government based in the House of Commons. The federal government should be able to act decisively but should hear what Nova Scotians (and others) think before it acts.
- Reform of the manner in which members of the House of Commons are elected, along the lines of proportional representation, is supported in order to reduce the influence of central Canada and make easier the election of underrepresented groups.

New Brunswick Commission, January 1992

- The Senate of Canada should be reformed such that:
 - its members are elected in a fashion that provides for better representation of the diverse collective identities of Canada;
 - there is an equal number of Senators from each province;
 - its power is equal to that of the House of Commons except that it could not withhold supply and it would not be a "confidence chamber";
 - it has the responsibility of ratifying or rejecting proposed appointments to national boards, tribunals and commissions; and
 - it follows a double majority rule for all measures dealing with language and culture.
- A Council of the Federation, composed of federal, provincial and territorial governments, should be created to foster cooperation among all jurisdictions.
- The federal and provincial governments should agree on cost-effective means of ensuring an independent assessment of their success in meeting shared constitutional obligations for the social and economic well-being of Canadians, and such assessments should be tabled for debate in Parliament and the provincial legislatures.

York University Project, January 1992

- The Senate should be reconfigured as an Institution of the Federation, rather than as a branch of Parliament. Its mandate would be:
 - to bring provincial interests to bear in national policy-making; and
 - to play a role in relation to the national aspects of provincial policies and programs.
- As a general rule, the reformed Senate should only be able to exercise a suspensive veto over federal legislation. After a fixed period, the House of Commons should be able to override the Senate through majority re-passage of the bill.
- In terms of federal law-making, the Senate should focus on issues of particular regional, provincial or linguistic significance. In such areas, it should be able to veto rather than merely delay federal legislation. Specifically, these matters include:
 - the exercise of the federal spending power;
 - the equalization formula;
 - federal-provincial agreements that require ratification or legislation from Parliament;
 - regional development grants or initiatives;
 - use of federal extraordinary powers such as the emergency power; and
 - language legislation.
- The Senate should follow a special voting mechanism, requiring majorities from both francophone and anglophone Senators, for the approval of language laws and other related cultural matters. A procedure should be set up to determine conclusively which matters fall within this category.
- The Senate should have the power to ratify appointments to the Supreme Court of Canada, the Bank of Canada, federal regulatory agencies (such as the National Energy Board, the National Transportation Agency and the CRTC), and to national cultural institutions, such as the CBC and the Canada Council.
- The Senate should play an important role in relation to the Canadian economic union and the "social union," as recommended elsewhere.
- There should be a "sliding scale" of representation in the Senate, weighted towards the less populous provinces but without providing for absolute equality of representation. This sliding scale would establish different categories of provinces, perhaps based on population, rather than assign specific numbers of seats to each province. One formula might be:
 - provinces with more than six million people would each have 12 seats.

- provinces with more than three million would each have nine seats.
- provinces with more than a million residents would each have six seats.
- the minimum provincial representation would be three seats.
- provision would be made for Territorial and Aboriginal representation.

Three Nations Concept, February 1992

- Ontario must accept that a reformed upper house -- elected, effective and more equal in representation -- is an important aspiration in the West and Atlantic Canada. Such a concession would be just and necessary.
- Any restructuring of representative institutions to satisfy the popular demand for greater democracy must also include mechanisms to ensure equal representation of women and seats for Aboriginal peoples.
- Asymmetry in provincial powers will have to be balanced by asymmetry in representation in the national government.

Ontario Select Committee, February 1992

- The Senate should be replaced by a new second chamber of Parliament whose mandate would include the effective representation of provincial and territorial interests in national decision-making.
- The House of Commons must remain the sole confidence chamber in Parliament. Legislative defeat in the second chamber should not lead to the resignation of the government.
- The second chamber must be an elected body. Members could be elected either (a) directly in a separate election to be held in conjunction with a provincial or territorial election; or (b) indirectly under a system of proportional representation based on provincial or territorial election results. This latter model would work as follows:
 - Voters would continue to cast ballots in provincial and territorial elections as at present.
 - Seats in the second chamber would be allocated in proportion to the popular vote received in the province or territory by those parties contesting the election in question. Thus, if a party received 30% of the vote, it would be entitled to 30% of the province's or territory's seats in the second chamber.

- The parties would then select the individuals who would fill these seats. One way of doing so might be through the preparation of a list of second chamber candidates by each party that would be available to the public prior to the election. If the election results translated into three seats (eg. 30% support for a particular party in a province entitled to 10 seats), the top three names on the party list would be selected.
- Candidates should not be required to meet any property qualifications.
- The distribution of provincial and territorial seats in the second chamber should be made more equitable than is currently the case in the Senate. The concept of equitability might even extend to equal provincial representation, if the following recommendations on the powers of the second chamber are adopted:
- All bills passed by the House of Commons should be introduced in the second chamber and be subject to either an absolute or suspensive veto as follows:
 - In the case of bills introducing or changing shared-cost programs in areas of exclusive provincial jurisdiction, the veto power should be absolute.
 - In the case of all other bills, the second chamber should have a suspensive veto. If this chamber (a) failed to approve a bill or (b) approved it with amendments, the bill would be returned to the House of Commons for further debate and an additional reading. The Commons could choose to accept or reject any amendments made by the second chamber.
- A standing joint second chamber - House of Commons committee could be established to monitor carefully the fulfilment of national standards under the enhanced s. 36 of the *Constitution Act, 1982*. This joint committee could have jurisdiction to recommend remedial action to both levels of government. Further study is required to determine if the mandate of the committee could extend to other federal-provincial matters.
- The statutory requirement of three judges from Quebec on the Supreme Court of Canada should be entrenched in the Constitution. As well, consideration should be given to entrenching the convention whereby three judges on the Court are appointed from Ontario, two from the Western provinces, and one from the Atlantic provinces. Entrenchment, however, must include the possibility of selecting judges from the territories.
- The Constitution should be amended to provide that in the case of a vacancy on the Supreme Court of Canada, the federal Minister of Justice should ask the appropriate provincial or territorial Minister(s) of Justice or Attorney(s) General to submit a list of nominees. Where an appointment is made to the Court, the federal government should appoint a person whose name has been submitted on such a list and who is acceptable to the federal government.

Beaudoin-Dobbie Committee, March 1992

- The federal proposals regarding comprehensive reforms to the House of Commons should not be pursued in this round of constitutional discussions as they do not require constitutional change. These issues should be addressed by the House of Commons.
- Senators should be chosen by the people of Canada by direct election, according to the following framework:
 - The Senate should be elected by proportional representation such that parties would nominate slates of candidates in multi-member constituencies; independent candidates would be possible; and parties could use multiple nominations to promote gender equality and better representation of minority groups.
 - Where possible, each Senate constituency would elect at least four Senators.
 - The Senate would have a fixed term of no more than six years.
 - The distribution of Senate seats among the provinces should be more equitable, reflecting the needs of less populous provinces and territories for relatively more seats.
 - Seats in a reformed Senate could be distributed in one of the following ways:
 - A total of 154 seats, of which Ontario and Quebec would have 30 seats each; British Columbia and Alberta would have 18 each; Saskatchewan and Manitoba (12); New Brunswick and Nova Scotia (10); Newfoundland (7); PEI (4); the Northwest Territories (2); and the Yukon (1).
 - A total of 109 seats, of which Ontario and Quebec would have 20 seats each; British Columbia and Alberta would have 12 each; Saskatchewan, Manitoba, New Brunswick and Nova Scotia (8); Newfoundland (6); PEI (4); the Northwest Territories (2); and the Yukon (1).
- *The Liberal Party members propose a smaller and more equal Senate, as follows:*
 - *A total of 100 seats, of which Ontario and Quebec would have 18 seats each; British Columbia and Alberta would have 9 each; Saskatchewan, Manitoba, New Brunswick, Nova Scotia and Newfoundland (8); PEI (4); the Northwest Territories and the Yukon (1).*

- Guaranteed Aboriginal representation in a reformed Senate will be a logical extension of Aboriginal self-government. Details of such representation should be negotiated with Aboriginal peoples, consistent with the relationship between the numbers of seats and population as applied to Senate seats in the provinces and territories.
- With the exception of supply bills, all normal legislation with policy content should require the consent of the Senate. There should be no exceptions, even for matters of "national interest."
 - In the case of deadlock on normal bills, the House of Commons should be able to override a Senate vote.
 - The Senate should be required to dispose of normal legislation within 180 days after it is received from the Commons.
- *The Liberal Party members disagree with the above recommendations regarding the powers of the Senate, saying the proposed House of Commons override would undermine the effectiveness of a reformed Senate. Therefore Liberal members recommend the Senate be granted an absolute veto on all bills, except for appropriation and budget bills. There should be a 30-day and 180-day veto, respectively, for these bills, after which period the delayed bill could be passed again in the Commons by a simple majority.*
- In the case of supply or appropriation bills, the Senate should be required to dispose of the measure within 30 days. At the end of the 30-day period, if the bill is amended or defeated by the Senate, the House of Commons would have to reaffirm it by a simple majority. The Speaker of the House of Commons should certify bills as supply bills for the ordinary functioning of the government.
- Measures affecting the language or culture of French-speaking communities should require approval of a majority of Senators voting and of francophone Senators voting. The Speaker of the Senate should certify bills as affecting the language or culture of French-speaking communities; there should be no appeal of the Speaker's decisions to the courts.
- The Senate should have the mandate to ratify the appointment of the Governor of the Bank of Canada, and of the heads of national cultural institutions, regulatory boards and agencies.
- The federal proposal to amend the *Constitution Act 1982* to provide for the appointment of Supreme Court judges from lists of candidates submitted by provincial and territorial governments is supported. However, in the case where governments cannot agree, the Chief Justice should be empowered to appoint, on a temporary basis, an *ad hoc* justice from the Federal Court or a provincial superior court. This would enable the Court to operate normally until a mutually acceptable candidate is found.

- The existence of the Supreme Court and its current composition, including three judges from Quebec trained in civil law, should be entrenched in the Constitution, as proposed by the federal government.

Alberta Select Special Committee, March 1992

- As a priority item, both the democratic principle of representation by population and the fundamental federal principle of equality of the provinces must be reflected in national decision-making. The first principle is represented in the House of Commons, and the second must be represented in a reformed Senate that is elected, has effective powers and equal provincial representation. Such a reformed Senate, capable of acting as a provincially sensitive counterbalance to the electoral weight of Central Canada, is a necessary component of any comprehensive package of constitutional reform.
- The general principles contained in the March 1985 report of the Alberta Special Committee on Upper House Reform are supported. (This report recommended a reformed Senate that is directly elected, has equal province representation, and has effective powers and provided an important detailed model for a Triple-E Senate.)
- The Senate must be elected, with the provinces determining the electoral rules within each province, including whether:
 - there should be a number of constituencies, or the whole province should be a single constituency; and
 - the method of selection should be the same as the current method followed by the House of Commons and provincial legislatures, or some form of proportional representation should be used.
- Senate elections should be held in conjunction with provincial elections.
- The Senate must consist of an equal number of Senators from each province.
- The territories should have lesser but significant representation in the Senate, and upon attaining provincehood must be granted equal representation.
- The Senate should have the power to initiate any legislation except money or taxation bills.
- Senators should not be eligible for Cabinet appointments.
- The Senate should not be a confidence chamber, meaning rejection of legislation by the Senate should not require the government's resignation.

- The Senate should have:
 - an absolute veto over legislation in matters directly affecting exclusive provincial jurisdiction, such as the use of the federal spending, taxation and declaratory powers, and other matters such as natural resources development;
 - a special veto over matters within concurrent jurisdiction, whereby an amendment (or veto) to legislation by a majority in the Senate may be overridden by the House of Commons by a vote that is greater in percentage terms than the Senate vote; and
 - a suspensive veto over matters within exclusive federal jurisdiction, which would require the Commons to reintroduce and approve legislation amended or rejected by the Senate.
- All changes affecting the French and English languages should be subject to a double majority veto, requiring a majority of all Senators and a majority of all French-speaking Senators or all English-speaking Senators, depending on the issue.
- The Senate should be given the responsibility of reviewing all appointments to the Supreme Court of Canada, and national boards and agencies.
- In the next round of constitutional discussions, the provinces should be given a formal role in the selection of Supreme Court judges. Where a vacancy occurs, the government of each province and territory may submit names to the federal government of qualified candidates from that jurisdiction. The federal government should appoint candidates from these lists of names.
- In the next round, recognizing Canada's two distinct legal systems, the Constitution should be amended to entrench the statutory requirement that three Supreme Court judges come from Quebec.
- As a sub-constitutional matter, a committee of the Alberta legislative assembly should be established to review how direct democracy measures could be appropriately applied within the context of our parliamentary system of government.
- As a sub-constitutional matter, Parliament should provide for provincial and territorial representation on national boards and tribunals, and reflect gender balance.

THE PROCESS OF CONSTITUTIONAL REFORM

Existing Constitution

Ss. 38-49 of the *Constitution Act, 1982*.

- Amendments may be initiated by the Senate, House of Commons or the legislature of any province.
- The *Constitution Act, 1982* includes five amending formulas as part of the process for amending the Constitution. Each formula applies to different matters to be amended. The formulas are:
 - *The General Amending Formula: Parliament and Seven Provinces.* This formula (known as the 7/50 formula) requires the consent of Parliament and two-thirds of the provinces (ie. at least seven), representing at least 50% of the population of all the provinces. It is the general amending formula in the sense that it applies to all amendments not provided for specifically in the other amending formulas. The general formula covers, for example, most aspects of the division of powers and the Charter of Rights. In addition, the general formula applies to amendments concerning the following matters:
 - the principle of proportionate representation of the provinces in the House of Commons;
 - the powers of the Senate, method of selecting Senators, the number of Senators each province is afforded, and residence qualifications for Senators;
 - the Supreme Court of Canada, other than its composition (which requires unanimous consent);
 - the extension of existing provinces into territories; and
 - the establishment of new provinces.
 - *Parliament and All Provinces.* The amendments covered by the second formula require the consent of Parliament and all of the provinces. The provisions covered by this formula concern the following matters:
 - the office of the Queen or her representatives in Canada;
 - the right of a province to a number of members in the House of Commons not less than the number of Senators to which the province was entitled at the time this provision came into force (April 17, 1982);
 - the use of English or French;

- the composition of the Supreme Court of Canada; and
- any amendment to the amending procedures.
- *Parliament and Affected Province(s).* Amendments which concern a provision that applies to one or more, but not all provinces, require the consent of Parliament and the provincial legislature(s) affected by the amendment. In particular, this formula applies to any amendments which involve alterations to the boundaries between provinces, and any amendment which relates to the use of English or French within a province.

Note: Under the three amending formulas described above, the Senate has a suspensive veto, whereby it can delay passage of an amendment by 180 days and require the House of Commons to repass it. However, it cannot kill the resolution, as it can with bills.

- *Parliament Alone.* Subject to certain exceptions, amendments which concern provisions of the Constitution that relate to the executive government of Canada or to the Senate and House of Commons may be made unilaterally by Parliament by ordinary legislation;
- *Provinces Alone.* Subject to certain exceptions, amendments which concern the constitution of a province may be made by the legislature of that province.
- Once the required legislatures have passed resolutions authorizing an amendment, the formal act of amendment is accompanied by proclamation issued by the Governor-General (except in the cases of Parliament or provinces acting along, where this is not required). With respects to matters covered by the general amending formula, the proclamation (and therefore the passage of the resolutions) must be made within three years from the adoption of the resolution initiating the amendment procedure. It cannot be made within the first year unless all provinces have responded by expressly adopting a resolution either approving or dissenting from the amendment.

Meech Lake Constitutional Accord, 1987

- Provinces would be able to opt out of amendments that transfer powers from provinces to Ottawa, and receive compensation, regardless of the field. Existing constitution only allows for compensation in areas of education and culture.
- Topics requiring consent of all provinces would be extended to include certain items, including Senate reform and the creation of new provinces, which now fall under the "Parliament and Seven Provinces" formula of the *Constitution Act, 1982* above.

- Constitutional conferences, to be held annually, would include Senate reform and roles and responsibilities respecting fisheries on their agendas.

1990 Constitutional Agreement, June 1990 (Companion Agreement)

- Premiers of New Brunswick, Manitoba and Newfoundland agree to submit the Meech Lake Accord for legislative or public consideration to achieve ratification by June 23, 1990.
- First Ministers shall review the entire process of amending the Constitution at constitutional conference required by s. 49 of *Constitution Act, 1982*.
- First Ministers agree to review the operation of the Constitution, including the Charter of Rights, at a future annual constitutional meeting.

Allaire Commission Report (Québec Liberal Party), January 1991

- Any amendment to the Constitution should be subject to approval by substantial majority of provinces, representing 50% of total population, including Quebec.
- Quebec government should hold a referendum by the fall of 1992, either on:
 - the ratification of the Allaire proposal, if agreed to by the Government of Canada; or
 - if an agreement is not reached on this reform proposal by Quebec, the proposition that Quebec assume the status of a sovereign state, and that Quebec offer to arrange an economic union with the rest of Canada, managed by institutions of a confederal nature.

Bélanger-Campeau Commission Report, March 1991

- Quebec should hold referendum on sovereignty, either between June 8-22, 1992, or between October 12-26, 1992. If the result is positive, Quebec would become sovereign state exactly one year later.
- Special parliamentary commission should be set up to study all matters relating to Quebec sovereignty, including any proposals from Canada for economic partnership, and to advise the legislature.
- Second special parliamentary commission should be set up to study and make recommendations on any new constitutional proposal from Canada before fall 1992. The commission may only consider a proposal officially binding the government of Canada and the provinces.

Report of the Group of 22, June 1991

- No changes recommended to existing amending formulas. None of Group's 28 recommendations would require consent of all provinces. Most would follow 7/50 consent formula; some could be implemented by Parliament alone.

Beaudoin-Edwards Committee Report, June 1991

- Existing General Formula (7/50 formula) changed to require consent of Parliament and each of the following four regions:
 - At least two of: New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland
 - Ontario
 - Quebec
 - At least two of: Manitoba, Saskatchewan, Alberta and B.C., representing 50% of the population of that region.
- Unanimous consent requirement retained for amendments relating to:
 - Use of English or French.
 - Proprietary rights of provinces.
 - Offices of the Queen and her representatives.
 - Any change as to which items require unanimous consent.
- New amending formula should be adopted only in the context of a substantial package of reform.
- Next parliamentary committee should study the relationship between opting out and the proposed amending procedure with four regional vetoes, and in what fields a province's right to opt out would apply.
- Any amendment to Constitution affecting Aboriginal peoples should require their consent.
- Extension of provincial boundaries into the territories should require consent of Parliament, and of the territory and province affected.
- Creation of new provinces should require consent of legislature of territory affected and Parliament. Should addition of a new province require a change to

amending formula, such change would be governed by the amending formula in effect at the time.

- For other matters, formulas in *Constitution Act, 1982*, ss. 43-45 would apply.
- Maximum period for ratification of proposed constitutional amendments would be two years.
- Ottawa would be allowed to hold consultative referendum on constitutional proposal at its discretion, either to confirm the existence of a national consensus or to facilitate the adoption of the required amending resolutions.
- Referendum would require a national majority and a majority in each of the four regions, as per amending formula above. Territories would participate as well, after deciding which region they would join for calculating regional majorities.
- Parliamentary committee, with members from the Senate and the House of Commons and large enough to be representative of the Canadian population, should be set up to consider constitutional proposals. This committee should establish a task force on issues of concern to Aboriginal peoples and task forces on other issues it deems appropriate; and hold joint hearings with committees set up by provincial and territorial governments, as appropriate.
- Amend Parliamentary rules to make mandatory the holding of public hearings on any proposed constitutional amendment involving the Government of Canada.
- Each provincial and territorial assembly should enact similar stipulation.
- *In their dissent from the majority report, New Democratic Party members recommended a constituent assembly be established to develop a set of consensus proposals to be presented to the country's legislatures for ratification. The composition of such a assembly would include:*
 - *an even division between Parliamentarians and others;*
 - *parity between men and women;*
 - *the participation of Aboriginal peoples;*
 - *equitable regional representation, including Canada's north;*
 - *representation among the non-Parliamentary contingent of Canada's minorities, including official language minorities, racial and ethno-cultural communities, physically and mentally handicapped people, and other underrepresented groups.*
- *The New Democrat members also recommended that constitutional reform proposals be subject to free votes in Parliament.*

- *British Columbia New Democrat member Lynn Hunter also dissented on the issue of the amending formula, saying that B.C. should be recognized in the next round of constitutional discussions as a region for the purposes of the amending formula.*

Spicer Commission Report, June 1991

- No relevant recommendations.

Northumberland Group Report, June 1991

- No relevant comments.

Ontario Discussion Paper, September 1991

- Extensive public discussion is now needed concerning the types of principles to be enshrined as part of the Social Charter, the nature of the mechanism to ensure they are followed, and how to recognize in the Constitution the need for public input and the importance of sharing and solidarity across the country.

Federal Proposals, September 1991

- The Government of Canada would be prepared to proceed with changes to the amending formula as specified in the Meech Lake Accord if
 - a consensus on this matter were to develop;
 - the accession of existing territories to provinces were to proceed on the basis of the existing amending formula; and
 - it were found desirable to proceed ultimately with any items requiring unanimous consent in the final package.
- The Government of Canada is committed to ensuring that Aboriginal peoples participate in the current constitutional deliberations.

Prince Edward Island Report, September 1991

- The process of constitutional reform must involve Canadians as much as possible, and those responsible for the process must be held accountable.

- A constituent assembly is too unwieldy and fraught with difficulties to make it an effective contribution to the reform of the Constitution.
- The Aboriginal peoples of Canada should formally participate during the process of constitutional reform. The Aboriginal peoples themselves should determine precisely how they would participate and how they would be represented.
- No further changes are needed to the amending formula at this time.
- The Committee is prepared to consider extending those subjects in the Constitution requiring unanimous consent in order to provide Quebec with the means to protect and promote its linguistic and cultural identity, provided the equality of all provinces continues to be guaranteed in the Constitution.

Manitoba Task Force Report, October 1991

- All jurisdictions are encouraged to hold public hearings before formal legislative debate begins on constitutional amendments.
- The constitutional amending formula should be changed so that territories might attain provincial status as other provinces did: through a bilateral agreement with the federal government.
- A constituent assembly should be given careful consideration as a mechanism which would develop constitutional proposals for study by Parliament and provincial legislatures. The work of such a representative body would be in addition to public hearings and other forms of public consultation. If the outcome of such a process includes recommendations for changes to the Constitution, these would be submitted to the existing formal amendment procedure for entrenchment in the Constitution.
- The Manitoba government should consider the use of referenda in the process of constitutional amendment.
- The governments of the Yukon and the Northwest Territories should be included in all constitutional meetings.

Nova Scotia Working Committee, November 1991

- There should be genuine, open and continuing consultations on constitutional matters by governments at all levels, and the people should be better informed at all times about what is being done and why.
- The time has come to reach an equitable negotiated settlement with the Aboriginal peoples regarding their rights and status in Canada. Such a settlement should be entrenched in the Constitution.

New Brunswick Commission, January 1992

- The federal and provincial governments should ensure the full participation of representatives of Aboriginal people in constitutional negotiations. Likewise the Constitution should be amended to ensure that no amendment that affects Aboriginal people in any way may be made without the consent of their representatives.

York University Project, January 1992

- A federal-provincial-Territorial-Aboriginal meeting on the Constitution should be convened in April 1992, after the report of the federal Special Joint Committee has been released. This meeting would be chaired by the Prime Minister and would bring together the Premiers, representatives of the provincial legislatures, and representatives of Territorial governments and national Aboriginal organizations.
- Any compromise or consensus position agreed to at the above-mentioned meeting should be placed before the people of Canada in a national consultative referendum. This referendum might be conducted under joint federal-provincial supervision and authority. There would have to be agreement as to the timing of the vote and the question or questions asked. As well, the referendum should require the support of regional majorities before any proposal could proceed.
- The federal proposals regarding changes to the amending formula are supported, with the exception of those respecting the creation of new provinces.
- The amending formula should provide that the creation of new provinces in the Territories require only the consent of the legislature in any Territory affected and the Parliament of Canada.
- The amending formula should provide that extension of an existing province into a Territory should require the consent of the legislatures of the Territory and province affected, and Parliament.

Three Nations Concept, February 1992

- Quebec must have a constitutional veto.
- If the national aspirations of Quebec are not acceptable to the rest of Canada, and a majority of Quebec residents register in a referendum their desire that Quebec become sovereign, the rest of Canada must recognize Quebec's right to self determination.

Ontario Select Committee, February 1992

- The Standing Orders of the Legislative Assembly of Ontario should be amended to make mandatory the holding of public hearings on any constitutional resolution introduced by the Government of Ontario in the Assembly. As well, a prior set of hearings should be required on any proposed constitutional amendment initiated by the Governments of Canada or Ontario, or to which the Governments of Canada or Ontario have given their agreement in principle.
- The Legislative Assembly of Ontario should establish a Standing Committee on the Constitution, as recommended in the 1988 Report of the Select Committee on Constitutional Reform and in the 1990 Report of the Select Committee on Constitutional and Intergovernmental Affairs. This new Standing Committee would conduct the hearings mandated under Recommendation 34. It would also be empowered to study constitutional matters on which the Governments of Canada and Ontario had yet to express a position.
- In general, the amending formulas contained in sections 38, 41, and 42 of the *Constitution Act, 1982* (the "7/50" and unanimity formulas) should be replaced by a requirement that constitutional amendments must receive the approval of Parliament and each of four regions of Canada, defined as follows:
 - at least two of: New Brunswick, Newfoundland, Nova Scotia, and Prince Edward Island;
 - Ontario;
 - Quebec; and
 - at least two of: Alberta, British Columbia, Manitoba, and Saskatchewan, representing at least 50% of the population of this region.
- The maximum period for the ratification of proposed constitutional amendments should be two years, beginning on the day on which a proposal is ratified by either Parliament or a provincial legislature.
- The creation of new provinces should require the consent only of Parliament and the legislature of the territory in question.
- Any constitutional amendment directly affecting Aboriginal peoples should require their consent.

Beaudoin-Dobbie Committee, March 1992

- Finding an amending formula that meets the needs of Quebec should be a matter of the highest priority during this round of constitutional negotiations. In particular, the First Ministers are urged to consider various options, including:

- to expand the unanimity procedure set out in s. 41 of the *Constitution Act, 1982* to include all items now governed by the general amending procedure (the seven and 50 rule).
 - to require the consent of two Atlantic provinces, Ontario, Quebec and two western provinces representing 50 per cent of the regional population for any amendment to representation in the House of Commons, the powers and composition of the Senate, and the Supreme Court.
 - to amend s. 42 to require that, except for creation of new provinces or the extension of existing provinces into territories, Quebec agree to any amendment to matters set out in the section.
 - to leave the general procedure (seven and 50) as it is, but upon the request of any province or region, a referendum be required for an amendment under that section to come into effect. The referendum would have to be carried nationally and in each region identified in the formula. (Implicit in this suggestion is that Quebec constitutes a region of Canada.)
 - to amend the general procedure such that Quebec must be among the seven or two-thirds of the provinces for all amendments under that procedure.
- The recommendations of the Beaudoin-Edwards committee on the need to review the effect of the creation of new provinces out of existing territories on amending procedures are endorsed.
 - A federal law should be enacted, if deemed appropriate by the Government of Canada, to enable the government, at its discretion, to hold a consultative referendum on a constitutional proposal, either to confirm the existence of a national consensus or to facilitate the adoption of the required amending resolutions.
 - The federal government should ensure the meaningful involvement of all provinces, territories and Aboriginal leaders on the development of the form and substance of the government's response to this report.
 - To protect the Aboriginal and treaty rights guaranteed to Aboriginal peoples by the Constitution:
 - any constitutional amendment directly affecting Aboriginal peoples should require their consent;
 - representatives of Aboriginal peoples should be invited to all future constitutional conferences dealing with such matters referred to above; and

- the Constitution should provide that a constitutional conference be held within two years after the amendment regarding the inherent right of Aboriginal self-government comes into force.

Alberta Select Special Committee, March 1992

- The complex constitutional and political issues before us cannot be solved all at once. The national constitutional agenda must be limited to manageable proportions. Accordingly, Alberta's reform proposals are categorized as follows:
 - Constitutional issues that require immediate resolution;
 - Constitutional issues that should be addressed in the next round of constitutional negotiations;
 - Matters that are best addressed outside the Constitution; and
 - The Constitutional amendment process.
- Albertans should be given the opportunity to fully participate in the process of constitutional change, through the use of referenda or plebiscites prior to the legislative ratification of any such amendment as required under the Constitution.
- The existing amending formula as contained in Part V of the *Constitution Act, 1982* is supported.
- Any proposed change to the amending formula should be rejected that does not respect the principle of provincial equality, or would not maintain the constitutional rights of a province to opt out from constitutional amendments that derogate from the legislative powers, proprietary or other rights or privileges of the legislature or government of that province.
- Representatives of the Aboriginal peoples must be full participants in any process leading to constitutional amendments that directly affect them.

OFFICIAL LANGUAGES

Existing Constitution

Selected sections: *Constitution Act, 1867*, ss. 93 & 133; Charter of Rights (1982), ss. 16-23; *Constitution Act, 1982*, s. 59

- Section 133 provides that either English or French may be used in the federal Parliament and the Quebec legislature, and in any federal or Quebec court.

Official records in Parliament and the Quebec legislature, and all Acts from either level of government would be in both languages.

- Section 93 (2) provides that minority Protestant or Roman Catholic school boards in Quebec shall have equal status and powers as minority Roman Catholic school boards in Ontario. (Technically, this entrenches the rights of religious-based school boards. In Quebec, Protestant schools are almost exclusively English language and Roman Catholic are largely though not solely French language. Outside Quebec, Roman Catholic public school boards are largely English language.)
- Sections 16-23 of the *Constitution Act, 1982* (Charter of Rights) restates language guarantees of S. 133 (above) and states that English and French are official languages of Canada. It extends these rights to the New Brunswick legislature, institutions and courts.
- Section 23 of the Charter of Rights guarantees the rights of Canadian parents whose first language is that of the English or French minority of the province they live in to have their children receive their primary and secondary education in that language. However, s. 59 (2) establishes this guarantee will only apply in Quebec once it is authorized by the Quebec legislature or government. No other province is afforded similar powers in respects to minority language education. Neither the Quebec National Assembly or the government has yet authorized the application of this guarantee.

Meech Lake Constitutional Accord, 1987

- The Constitution to be interpreted in a manner consistent with recognition that:
 - French-speaking Canadians, centred in Quebec but also living elsewhere, and English-speaking Canadians, largely outside Quebec but also inside Quebec, are fundamental characteristics of Canada.
 - Quebec constitutes within Canada a distinct society.
- Parliament and provincial legislatures charged with preserving these fundamental characteristics.
- Quebec legislature and government charged with preserving and promoting Quebec's distinct identity.

1990 Constitutional Agreement, June 1990 (Companion Agreement)

- Add to the agenda of constitutional conferences matters of interest to English-speaking and French-speaking linguistic minorities.

- Require resolutions of Parliament and the New Brunswick legislature to amend the province's Bill 88 recognizing equal status of official language communities in that province, and to entrench such recognition in the Constitution. Affirm an additional role of the New Brunswick legislature and government to preserve and promote the equal status, rights and privileges of the province's official language communities.

Allaire Commission Report (Québec Liberal Party), January 1991

- No relevant recommendations.

Bélanger-Campeau Commission Report, March 1991

- Contribution of English-speaking community to Quebec should be stressed and recognized.
- Maintain legal guarantees to ensure complete protection of the rights and institutions of English-speaking community.

Report of the Group of 22, June 1991

- Committed to the *Charter of Rights and Freedoms*
- Provinces should have primary responsibility to promote cultural matters, but Ottawa retains role regarding national cultural institutions and international image.
- No changes to existing official languages protection.

Beaudoin-Edwards Committee Report, June 1991

- No relevant recommendations.

Spicer Commission Report, June 1991

- Independent review of the costs and benefits of federal official languages policy.
- All Canadian children should have the opportunity to learn both official languages in school.

Northumberland Group Report, June 1991

- The group believes the federal government should continue to support enlightened language policy in the Maritime provinces.

Ontario Discussion Paper, September 1991

- No relevant recommendations.

Federal Proposals, September 1991

- A section should be included in the Charter reading:
 - 25.1 (1) This Charter shall be interpreted in a manner consistent with
 - (a) the preservation and promotion of Quebec as a distinct society within Canada; and
 - (b) the preservation of the existence of French-speaking Canadians, primarily located in Quebec but also present throughout Canada, and English-speaking Canadians, primarily located outside Quebec but also present in Quebec.
 - (2) For the purposes of subsection (1), "distinct society", in relation to Quebec, includes
 - (a) A French-speaking majority; (b) a unique culture ; and (c) a civil law tradition.
- A "Canada Clause" that acknowledges who we are as a people and who we aspire to be should be entrenched in the Constitution in section 2 of the *Constitution Act, 1867*. Among the fourteen characteristics and values that would be appropriate to be reflected in such a statement are:
 - Recognition of the responsibility of governments to preserve Canada's two linguistic majorities and minorities.
 - The special responsibility borne by Quebec to preserve and promote its distinct society.
- It is proposed that the Senate be reformed in several ways, including:
 - As a general rule, in order for measures to become law, approval of both the Senate and the House of Commons should be required, as at present. However,
 - for matters of language and culture, the Senate would also have a special voting rule, requiring more than a simple majority.

Prince Edward Island Report, September 1991

- No relevant recommendations.

Manitoba Task Force Report, October 1991

- The Constitution should include a Canada Clause that recognizes the fundamental characteristics of Canada, including:
 - the status of English and French as the official languages at the federal government level.
- Support for programs that serve linguistic minority communities is affirmed.

Nova Scotia Working Committee, November 1991

- The historic accommodation between English-speakers and French-speakers in Canada that constitutional bilingualism represents is endorsed.
- Greater effort should be made by the Nova Scotia government to meet the full range of needs of the Acadian population in their own language, and to meet their broader cultural, linguistic and educational needs. There should be a constitutional obligation on all governments to preserve and promote Canada's linguistic duality.

New Brunswick Commission, January 1992

- The existence of the English and French linguistic communities throughout the country, and the responsibilities of the federal and provincial governments to support development of both communities, should be recognized as a fundamental characteristic of Canada in the Canada Clause.
- The *Charter of Rights and Freedoms* should affirm the responsibility of Parliament and the government of Canada to *preserve and promote* the English and French linguistic communities throughout the country; and the responsibility of provincial legislatures and governments to *preserve* the same linguistic communities.
- The constitution should be amended to include a clause recognizing the equal status, and equal rights and privileges of the English and French linguistic communities in New Brunswick. This equality should include the right to distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of these communities.

- A reformed Senate should follow a double majority rule for all measures dealing with language or culture.

York University Project, January 1992

- The proposed new section 25.1, providing explicit recognition of Quebec's distinctiveness and also of Canada's linguistic duality, is supported.
- In terms of federal law-making, the Senate should focus on issues of particular regional, provincial or linguistic significance. In such areas, including language legislation, it should be able to veto rather than merely delay federal legislation.
- The Senate should follow a special voting mechanism, requiring majorities from both francophone and anglophone Senators, for the approval of language laws and other related cultural matters. A procedure should be set up to determine conclusively which matters fall within this category.

Three Nations Concept, February 1992

- No relevant recommendations.

Ontario Select Committee, February 1992

- The Canada Clause should recognize, among other things, Canada's historical traditions of a stable British parliamentary democracy, linguistic duality, and recognition and protection of cultural and linguistic minorities.
- The Charter of Rights should be reviewed to consider, among other things, whether the terms in which it is proposed to recognize Canada's linguistic duality are sufficient.

Beaudoin-Dobbie Committee, March 1992

- Preamble includes a reference to French-speaking and English-speaking peoples.
- Canada Clause includes a reference to the role of French and British settlers, and to "a profound commitment to the vitality and development of official language minority communities" as a fundamental value of Canada.
- The Charter of Rights should be amended to include the following section:

25.1 (1) This Charter shall be interpreted in a manner consistent with

(a) the preservation and promotion of Quebec as a distinct society within Canada; and

(b) the vitality and development of the language and culture of French-speaking and English-speaking minorities throughout Canada.

(2) For the purposes of subsection (1), "distinct society", in relation to Quebec, includes: (a) a French-speaking majority; (b) a unique culture; and (c) a civil law tradition.

- Under proposals for a reformed Senate, measures affecting the language or culture of French-speaking communities should require approval of a majority of Senators voting and of francophone Senators voting. The Speaker of the Senate should certify bills as affecting the language or culture of French-speaking communities; there should be no appeal of the Speaker's decisions to the courts.
- The federal proposal to permit legislative delegation between Parliament and provincial legislatures should be adopted within a constitutional framework that will address concerns about this procedure. This framework should ensure that:
 - in the case of delegation to a provincial legislature, the provincial government assume the official languages obligations of the federal government.

Alberta Select Special Committee, March 1992

- All changes affecting the French and English languages should be subject to a double majority veto, requiring a majority of all Senators and a majority of all French-speaking Senators or all English-speaking Senators, depending on the issue.
- As a sub-constitutional matter, the federal government should review the application of federal language legislation and policy in Canada.



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